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FROM

Hon. Frederick W. Dallinger.

Cambridge.

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Call, Resolutions and Official Proceedings

WESTERN STATES WATER POWER CONFERENCE

Portland, Oregon
September 21-22-23, 1915

GOVERNORS AND OFFICIAL DELEGATES OF STATES OF

Arizona, California, Colorado, Idaho, Montana, New Mexico
North Dakota, Nevada, Oregon, South Dakota
Utah, Washington and Wyoming

CHAIRMAN:
WILLIAM SPRY, *Governor of Utah*

SECRETARY:
C. C. CHAPMAN, *Portland, Oregon*

1915
C. C. CHAPMAN, *Publisher*
Commercial Club Building
PORTLAND, OREGON

W. N. McARTHUR
3D DIST. OREGON

HOUSE OF REPRESENTATIVES

WASHINGTON

Hon. Frederick W. Dallinger,

House of Representatives,

My dear Colleague:

Mr. C. C. Chapman, Secretary of the Western States Water Power Conference, held at Portland, Oregon, September 21-23, 1915, has sent me a number of the printed [illegible] of the proceedings of said conference and has

members of the Senate and House of Representatives. I am sending you one of these reports herewith and trust that the same may be of interest tn you.

Very sincerely yours,

C. N. McArthur.

Save

Call, Resolutions and Official Proceedings

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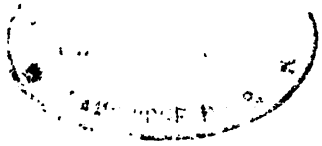

Hon. Frederick W. Dallinger
Cambridge

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CALL FOR THE CONFERENCE.

Senate Joint Memorial No. 6, Adopted by the Senate and House of Representatives of the Twenty-eighth Regular Session of the Legislative Assembly of the State of Oregon, ending February 20, 1915.

Whereas, there is now pending in the Congress of the United States legislation designed to encourage the development of the water-power resources of the West, and

Whereas, it is contemplated by such legislation that the interest and control of each state in the water power which may be developed, under the provisions of such legislation, shall in some particulars be no more than one-half, the other one-half accruing to or resting in the Government of the United States, and

Whereas, in other particulars, said legislation would give to the Government of the United States a preferential reversionary interest in water powers developed thereunder; *be it therefore*

RESOLVED, By the Senate, the House concurring,

That it is now wise and opportune for the State of Oregon and the whole people thereof, through their Legislative Assembly, respectfully to assert for the guidance of their Senators and Representatives in Congress, and for the information of the Congress of the United States, the following principles as just and equitable in the premises:

That the title to the beds of all non-navigable streams and the water powers within their banks now unappropriated and as yet not alienated by the State of Oregon, and the title to the beds of all navigable streams within the State of Oregon, and the water power within their banks (subject only to the rights of commerce) is vested exclusively in the State of Oregon, and the whole people thereof.

That the unappropriated or reserved or withdrawn Government lands on the banks of said streams, wherein water power is available, while necessary to the development of said power, are in no case of value equal to the value of the water power within said banks, and owned by the State of Oregon.

That the State of Oregon does not concede that the proportionate value of said water power to the value of said lands necessary to its development is less than the ratio of fifty to one.

That under such conditions it is to the benefit of public policy that the Government of the United States relinquish to the states its title to lands needed for water-power development, under such terms as will safeguard the public from monopolistic or speculative control.

That of importance equal to the water-power development is the creation of hydro-electric markets now interfered with by burden-

some restrictions on the settlement of public lands and on the utilization of mineral and timber products, extending in Oregon alone over tracts equal to nearly sixty per cent of the area of the State; and *be it further*

RESOLVED, That for the purpose of declaring in more specific detail the principles which the water power and public land states of the West deem a just and equitable basis for developing their resources, the Legislature of the State of Oregon does hereby invite each of the Governors of the States of Washington, Idaho, Montana, Colorado, California, Wyoming, Utah, Nevada, South Dakota and North Dakota, and five delegates to be appointed by the Legislatures of the said States, to meet with five delegates to be elected by the Legislature of the State of Oregon, in conference at Portland, Oregon, in the summer or fall of the year 1915; and *be it further*

RESOLVED, That the Governor be selected as chairman of the Oregon delegation and that the Senate select two delegates and the House two delegates; *provided*, that in those states where the Legislature will not convene before the time of conference, the Governor be requested to appoint the delegates, and that the Governor of the State of Oregon appoint the time for such conference, in accordance with the desires of the several states herein mentioned. *Be it further*

RESOLVED, That copies of this resolution be transmitted to the Oregon Senators and Representatives in Congress, to the Speaker of the National House of Representatives, to the President of the United States Senate, to the Secretary of the Interior, and to the Governor of each State invited to the Water Power Conference herein provided for transmission to the Legislature of his State.

Filed in the office of the Secretary of State of Oregon, February 20, 1915.

RESOLUTIONS OF THE CONFERENCE

Adopted Thursday September 23, 1915

WHEREAS, the new states admitted into the Union are of necessity upon an equal footing in all respects whatever with the original states; and,

WHEREAS, each state has full jurisdiction over all lands within its borders, including the beds of streams and other waters; and,

WHEREAS, the ownership by the Federal Government of the technical title to vacant public land within a state does not confer upon the Federal Government any greater or other governmental powers than it possesses within the original states; and,

WHEREAS, the long established and sound policy of the United States with respect to the disposition of its unappropriated public lands is opposed to the making of a direct revenue therefrom, beyond the expense incident to the surveying, classification and disposing of such lands, but, on the contrary, that said policy is intended to encourage and promote the settlement and development thereof; and that any act of Congress, or any administrative interpretation thereof, which is not

in harmony with this policy, does an injustice to the new states by placing them on an unequal footing with the original states, and by discouraging and preventing the settlement of such new states and the development of their resources; and,

WHEREAS, the vacant land belonging to the Federal Government constitutes two-thirds of the area of the states represented in this Conference, and amounts to more than twice the area of the thirteen original states; and,

WHEREAS, the vacant lands belonging to the Federal Government are under the law exempt from taxation, while the burden of maintaining local government over their entire area rests upon the states; and,

WHEREAS, the maintenance inviolate of the constitutional equality of the states of the Union is essential to that balance of power on which the perfection and endurance of our political fabric depend, and to the harmonious operation of the scheme upon which the Republic was organized; now, therefore, be it

RESOLVED, that we are unalterably opposed to any legislation which is in conflict with the fundamental principles above declared.

RESOLVED, that the states have the constitutional right and power to control and regulate the

appropriation and use of the waters within their boundaries for all beneficial purposes except navigation, and also the right and power to control and regulate the rates and service of their public utilities.

RESOLVED, that we are opposed to any policy that looks toward imposing the system of leasing generally upon the public domain for the reason that such system is contrary to the spirit of our free institutions, and would retard the development of the resources of the states in which there is still any public land.

RESOLVED, that in view of what we believe to be administrative misconstruction of existing legislation, we are in favor of a declaratory act by Congress recognizing and acknowledging that the proprietary interest of the United States in the vacant land within the states is subject to the jurisdiction and eminent domain of those states for all uses which are declared by the laws of those states to be public uses and which are so essential to the development, well-being, and prosperity of those states.

RESOLVED, that the purposes of encouraging the development and utilization of the natural resources of the country by private enterprise which actuated Congress in the enactment of the right-of-way acts of July 26, 1866, and March 3, 1891, and in the enactment of the acts of March 3,

1877, and June 4, 1897, making all non-navigable waters on public lands, including forest reservations, free for appropriation for beneficial uses, should actuate Congress today in the enactment of any further legislation upon these subjects.

RESOLVED, that any legislation of Congress, the purpose or effect of which is to substitute arbitrary or discretionary authority of executive officials for the fixed rules of law governing the administration, sale or other disposition of public lands and reservation and rights-of-way over the same, will be unwise and inconsistent with the spirit of our Constitution.

RESOLVED, that we are opposed to ownership or control either direct or indirect by the United States Government of intra-state public utilities.

Western States Water Power Conference
WILLIAM SPRY, *Chairman*
C. C. CHAPMAN, *Secretary*

OFFICIAL PROCEEDINGS
WESTERN STATES WATER POWER CONFERENCE

Multnomah Hotel, Portland, Oregon, September 21, 22, 23, 1915.

Morning Session, Tuesday, September 21st, 1915.

Conference called to order at 9:30 o'clock by Governor James Withycombe of Oregon.

ADDRESS BY GOVERNOR OF OREGON

GOVERNOR WITHYCOMBE: It is a privilege for Oregon to play host to a gathering such as this. It is both a pleasure and an honor for me to bid you welcome. And it is an opportunity and an inspiration for the West to assemble as it is here represented—an inspiring opportunity for accomplishing in setting forth our hopes and our beliefs relative to the development of the heritage with which our country has been endowed.

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We are thirteen, we states of the West, linked with the common bond of interests almost identical. Our states are young and sturdy, aspiring to great attainments.

But each of our states is held in leash—a leash grasped at the other end by a Federal Government, none too indulgent, none too sympathetic with the best meaning of the phrase "state's rights," and certainly none too familiar, in some phases of its bureaucratic paternalism, with the facts as they exist in the West today. (Applause.)

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One hundred and thirty-nine years ago, thirteen eastern states joined hands in protest against the abuses and misunderstandings engendered by a long-distance government operating across an ocean. There is to my mind something reminiscent of 1776 in this gathering of thirteen western states.

We are here assembled, in some measure, to discuss the ills appurtenant to a government operating at long-distance across a continent, and to offer suggestions for betterment which should be satisfactory alike to East and West.

If from this conference and from others, and from the united effort of the West, we could make effective a declaration of independence in state development, we would accomplish as notable a service for the people of the West as did our forefathers at Philadelphia for the citizens of the Atlantic seaboard.

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The framers of our Constitution

remembered well the oppression, strife, quenching of liberty and pursuit of individual happiness through King George's long-distance government and taxation beyond the control of those who were taxed.

And they sought to avoid such ills by the adoption of a Constitutional Government with enumerated powers, all the authority not enumerated being expressly reserved to the respective states and the people thereof.

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The fundamental principle involved was to insure united strength to the National Government by allotting to it control of all foreign and national affairs and all matters pertaining to foreign and interstate trade.

Bearing well in mind the failure of long-distance government beyond the control of any particular community affected, the rights of local self-government were jealously guarded by the careful balancing of power of each independent sovereign—the Federal Government being sovereign in its national sphere and the state governments independent sovereigns in their respective local spheres. (Applause.)

We have proceeded through long years of peace and happiness under this old Constitution, the Federal Government performing its functions and the state governments theirs.

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Apparently disregarding this proper balance of power between the Federal Government and the states, there now appears a persistent tendency in Washington to assert ownership of its vast landed estate by the United States as a sovereign, and by assuming such sovereign powers to build up within each of the public land states a distinct and separate province of supreme authority, overreaching and superseding the individual rights of these states.

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If this theory can be sustained, the public land states, which have in the aggregate more than sixty per cent of their area withdrawn from taxation, indefinitely will bear burdens of national administrative cost utterly disproportionate to their proper pro rata.

If the present Federal policy of withholding lands from settlement and of withdrawals for reservations under bureau control continues, possibly more than one-half the area of our western states will forever be exempt from taxation, and yet the inhabitants thereof enjoy the bounty of the state governments, supported solely by the taxpayers on patented lands.

More than half of our area well may be inhabited by a race of tenants protected in their lives and liberty at the expense and by the grace of the states, and yet remitting their rents and tolls to the bureaus in Washington as tax collectors for the omnipotent sovereign. (Applause.)

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I speak of long-distance government, without the consent of and without adequate local representation by those governed, because that is, in a great measure, what the present public land policy involves.

In the case of the state legislatures, public service commissions and county and city governments, if the people's representatives fail to pass needed laws, or if they pass unsatisfactory laws, the particular people involved have it within their power to change such representatives until the laws are in conformity with the needs and desires of the local community governed. If the operators of water powers, or any other utilities, fail in their duties as public agents properly to serve their respective communities, the laws of the state, enacted by the particular people affected, are usually prompt and effective. If by experience they are found lacking in any particular, the people affected are in a position effectively to remedy them.

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If the Federal Government, through the Washington bureaus, can exercise the paramount right of sovereignty over the government's vast landed estate, then we shall have our public utilities controlled, or at least regulated, by bureau chiefs three thousand miles away in Washington, who often have no knowledge of Western conditions and necessities, who are not and who cannot be made effectively responsible to the local needs and desires of the people served, and who will deal with our Western communities in their unrestrained and wholly arbitrary discretion, wielding a great and unlimited power in the name of the Federal Government.

The particular people served will have no controlling voice in their selection nor in their tenure of office, and will have no right of appeal or redress of any kind against their decisions.

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You well know the numerical impotence of our sparce representation in Congress. None can say we of the West have real opportunity to wield any appreciable power in connection with possible adjustments of Federal regulation of our economic developments.

As matters stand, what we get, practically speaking, will be solely by the grace of the members from the eastern states, many of whose constituents, having utilized their own natural resources in years gone by, consider it little short of criminal that we should even consider transforming our streams into wealth, our forests into payrolls, and our vacant lands into producing farms.

Broadly speaking, our thirteen western states will face the dubious privilege of taxation without representation—and that phrase should at least strike a chord of sympathy in those thirteen other states whose rallying cry it became at our nation's birth. (Applause.)

Gov. WITHYCOMBE: Gentlemen, the next thing in order will be the nomination of a temporary chairman.

Senator W. Lair Thompson, delegate from Oregon, nominated William Spry, Governor of Utah, for Temporary Chairman.

There were no other nominations.

There being no objection, the nomination was put and Governor

Spry was unanimously elected Temporary Chairman.

Governor Spry assumed the chair as Temporary Chairman.

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Gov. WITHYCOMBE: I take pleasure in introducing your Temporary Chairman, Governor Spry of Utah, a man whom you know is greatly interested in the development of the West. (Applause.)

THE CHAIRMAN: It is not my purpose to make a speech to you at this time. You have already listened to the most delightful expressions of Governor Withycombe in welcoming you here, and you will also have the opportunity of listening to many other excellent speeches during the day. Therefore, I presume that the most advantageous thing to do now is to proceed to business, and I understand that the next order of business will be the election of a Temporary Secretary. But, before that is done, I want to say this, that I desire to express my appreciation, not merely for the honor that has come to me personally, but because of the splendid recognition to the people of my State through the selection of me. I am deeply appreciative of the honor.

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The Temporary Chairman called for nomination of a Temporary Secretary.

General E. A. Wedgwood, delegate from Utah, nominated C. C. Chapman of Portland for Temporary Secretary.

There were no other nominations.

There being no objection, the Temporary Chairman put the motion, and C. C. Chapman was unanimously elected Temporary Secretary.

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The Temporary Chairman stated the next order of business as the selection of a Committee on Credentials.

Senator John W. Hart, delegate from Idaho, moved that the Temporary Chairman appoint a Committee on Credentials composed of five delegates.

Motion seconded and carried unanimously.

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The Temporary Chairman announced the next order of business as the selection of a Committee on Permanent Organization and Order of Business.

Senator W. Lair Thompson, delegate from Oregon, moved that the Temporary Chairman appoint a Committee of Five on Permanent Organization and Order of Business. Motion seconded and carried unanimously.

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The Temporary Chairman announced the next order of business as the selection of a Committee on Resolutions.

United States Senator Reed Smoot, delegate from Utah, moved that the Temporary Chairman appoint a Committee on Resolutions to consist of one delegate from each of the thirteen states represented in the conference.

Motion seconded.

United States Senator Thos. J. Walsh, delegate from Montana, moved as an amendment to Senator Smoot's motion, that the Committee

on Resolutions consist of one member from each state represented in the conference, said member to be a delegate chosen by the delegates present from each of the respective states. Motion seconded.

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SENATOR WALSH: I move to amend that by imposing in the delegation from each state the power to select its member of that committee. This Convention can do just two things,—debate and resolve. The resolutions will, of course, formulate the opinions developed during and through the debate. Most of us are strangers to us, and I apprehend that the delegations will each be able to themselves select the member of the delegation that will most appropriately express before the committee their views on the matters under consideration. I think that course ought to be pursued because although the Chairman of the Congress will doubtless be familiar, more or less, with the members of the delegates from the various states represented here, he would—it is scarcely to be conceived that any man should be so familiar with the various members of these delegations that he could make as wise a choice and selection as the delegates could do themselves. This course is the one pursued by all national and civic organizations, and by all political conventions. Furthermore, it seems to me that it would be getting nearer to the source of the power of the people.

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SENATOR SMOOT: I have followed the plan that has been adopted by this Convention in allowing the Chair to appoint the members of the committee. I favored that plan in the other instances, and I favor it in this. The Chair has been allowed to appoint the members of the Credentials Committee, and next the Committee on Permanent Organization and Order of Business, and I see no reason why the Chair cannot appoint a committee on resolutions in the same way that it has appointed the other two committees. I do not accept the argument made by the Senator from Montana wherein he says that all national conventions and civic organizations, generally, appoint their delegates in the way suggested by him. I notice very often, I think more often than otherwise, committees are appointed by the Chair. I see no reason why the Chair will not appoint today the committee on resolutions as well as it has appointed other committees. I feel that every state represented here should have a member of this resolutions committee, and that is why I moved for the representation from each of the states. I take it for granted that the Chair knows just as well the ideas of each of the delegations of the state as to who would best be qualified to serve on the Resolutions Committee as he does on the question of who should best serve on the Credentials Committee, or on the Committee on Permanent Organization and Order of Business, and I see no reason whatever that that order should be changed today.

If there had been anybody who had brought up the question before

I made the motion, I would not have cared which way it went, but I do not see why a change should be adopted now, nor why any objection should be made to the motion.

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SENATOR WALSH: I should have been very glad indeed to have made this suggestion that I have embodied in my amendment if I had had any information that it was the purpose of anybody to change the order of the appointment of the Committee on Resolutions.

I was favored with a copy of the program of proceedings, from which I observed that the Committee on Credentials and the Committee on Permanent Organization were to be appointed at this time. Nobody would be liable to object to appointment of the committees that have been appointed by the Chairman. There will be no difficulties in this Convention about the appointment of committees such as those. Likewise, Mr. Chairman, I apprehend that there will be no strenuous debate upon what the order of business should be. Of course, the Resolutions Committee is the thing. So that we might very well leave the Chairman the appointment of these two minor and unimportant committees, and yet so arrange it that the appointment of the all-important committee should be left to the delegates of the various states who come here representing the sentiment in their own states. That is an intelligent assumption, and is reasonable. I hold in my hand the program, which did not include the appointment of committees at this time.

SENATOR SMOOT: If it is a question of resolutions, I will say that it does not make any difference whether the Chairman appoints the Committee on Resolutions, or the delegates select the members of that committee. The question will be decided by the body of this Convention. They will vote them up or they will vote them down, and it would not make any difference whether a man is on the Committee on Resolutions or not. Each of us here will have ample chance to discuss the resolutions before they are adopted. I cannot see why we should change the rule now of appointment here of committees on the basis represented here by the Senator from Montana.

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GOVERNOR ERNEST LISTER OF WASHINGTON: I would heartily agree with the Senator from Utah were it true that our estimable Chairman knew personally every member of this delegation here. I have the utmost confidence in the gentleman who presides here this morning. It is true, however, that no man here can know the delegates from each of the different states perfectly, and I think it is fair to presume that the delegates from any state know better and understand better the gentleman on their delegation who is best fitted for work on this Committee on Resolutions than can the Chairman of this meeting. I am heartily in favor of the amendment as proposed by the Senator from Montana. (Applause.)

Mr. E. B. Piper, delegate from Oregon, raised the point of order that the proper order of business, "Selection of Committee on Resolutions," would be for said selection to be made after the delegates of the conference were seated and its permanent organization effected. The Temporary Chairman ruled the point of order well taken.

Mr. Piper moved that the entire subject of the selection of a Committee on Resolutions be referred to the Committee on Permanent Organization and Order of Business.

Motion to refer seconded and carried unanimously and the motion by Senator Smoot and amendment by Senator Walsh were so referred.

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Senator Thompson moved that a recess of five minutes be taken to permit the Temporary Chairman to canvass the list of delegates present whose appointment had been reported by the Governor of Oregon for the purpose of appointing the Committee on Credentials and the Committee on Permanent Organization and Order of Business.

Motion seconded and carried unanimously.

Temporary Chairman at 10:30 o'clock A. M. declared a recess of five minutes.

Upon request of the Temporary Secretary, the Governor of Oregon furnished the following list of Delegates of whose official appointment he had been notified by the Governors of the respective States named:

ARIZONA
- Governor Geo. W. P. Hunt, Phoenix.
- Howard S. Reed, Phoenix.
- E. F. Sanguinetti, Yuma.
- T. A. Riordan, Flagstaff.
- Prof. W. H. Lawrence, Tucson.
- Alex. T. Nelson, Sacaton.

CALIFORNIA:
- Governor Hiram W. Johnson, Sacramento.
- W. A. Johnstone, Sandimas.
- A. E. Chandler, San Francisco.
- Irving Martin, Stockton.

COLORADO:
- Governor Geo. A. Carlson, Denver.
- George E. West, Durango.
- A. P. Ardourel, Boulder.
- Clyde C. Dawson, Denver.
- Thos. Tonge, Denver.
- David R. Elliott, Colorado Springs.
- W. F. R. Mills, Denver.

IDAHO:
- Governor Moses Alexander, Boise.
- James H. Hawley, Boise.
- F. S. Randall, Lewiston.
- John W. Hart, Menan.
- Fred W. Berger, Berger.
- I. E. Rockwell, Bellevue.
- Dr. J. B. Morris, Lewiston.

MONTANA:
- Governor Samuel V. Stewart, Helena.
- Henry L. Myers, Hamilton.
- Thomas J. Walsh, Helena.
- J. B. Collins, Miles City.
- Sam D. Goza, Helena.
- J. E. Erickson, Kalispell.

NEW MEXICO:
- Governor William F. McDonald, Santa Fe.
- N. B. Laughlin, Santa Fe.
- E. W. Dobson, Albuquerque.
- C. M. Bayne, Raton.
- Joseph Gill, Clayton.

NEVADA:
- William M. Kearney, Carson.
- Key Pittman, Tonopah.

NORTH DAKOTA:
- Governor Louis B. Hanna, Bismark.
- D. V. Moore, Grand Forks.
- John O. Hanchett, Harvey.
- James F. Randall, Minnewaukon.
- H. W. Braatelin, Williston.

OREGON:
- Governor James Withycombe, Salem.
- W. Lair Thompson, Lakeview.
- C. S. Hudson, Bend.
- S. B. Huston, Portland.
- Edgar B. Piper, Portland.

SOUTH DAKOTA:
- Governor Frank M. Byrne, Pierre.
- S. E. Wilson, Hot Springs.
- Chambers Kellar, Lead.
- A. J. Plowman, Deadwood.
- Mortimer Crane Brown, Spearfish.
- O. E. Farnham, Newell.

UTAH:
Governor William Spry, Salt Lake City.
Senator Reed Smoot, Provo.
E. A. Wedgwood, Salt Lake City.
S. A. Bailey, Salt Lake City.
W. D. Beers, Salt Lake City.
WASHINGTON:
Governor Ernest Lister, Olympia.
Phil H. Adams, Ellensburg.
M. C. Harris, Hoquiam.
A. H. Imus, Kalama.
W. V. Wells, Anacortes.
WYOMING:
Clarence D. Clark, Evanston.

The Register of Attendance indicated the following delegates present with credentials:

ARIZONA:
Howard S. Reed.
CALIFORNIA:
A. E. Chandler.
COLORADO:
A. P. Ardourel.
George E. West.
Clyde C. Dawson.
Thomas Tonge.
David R. Elliott.
W. F. R. Mills.
IDAHO:
James H. Hawley.
Fred W. Berger.
J. W. Hart.
I. E. Rockwell.
Dr. J. B. Morris.
MONTANA:
Senator Thomas J. Walsh.
J. B. Collins.
Sam D. Goza.
J. E. Erickson.
NEVADA:
W. M. Kearney.
NORTH DAKOTA:
John O. Hanchett.
D. V. Moore.
OREGON:
Governor James Withycombe.
W. Lair Thompson.
H. B. Huston.
Edgar B. Piper.
UTAH:
Governor Wm. Spry.
W. D. Beers.
Senator Reed Smoot.
E. A. Wedgwood.
S. A. Bailey.
WASHINGTON:
Governor Lister.
M. C. Harris.
A. H. Imus.
W. V. Wells.
Phil H. Adams.

The list reported by the Governor of Oregon and the Register were submitted by the Temporary Secretary to the Temporary Chairman.

At 10:35 o'clock A. M. the Temporary Chairman called the conference to order, following the recess of five minutes.

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The Temporary Chairman appointed the Committee of Five on Credentials as follows:

Committee on Credentials
John W. Hart, Idaho.
S. B. Huston, Oregon.
W. M. Kearney, Nevada.
Geo. E. West, Colorado.
E. A. Wedgewood, Utah.

The members of the Committee on Credentials were excused from attendance at the conference pending the meeting of said committee.

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The Temporary Chairman appointed the following as the Committee on Permanent Organization and Order of Business:

Committee on Permanent Organization and Order of Business
W. Lair Thompson, Oregon.
Jno. O. Hanchett, North Dakota.
M. C. Harris, Washington.
I. W. Rockwell, Idaho.
J. B. Collins, Montana.

The members of the Committee on Permanent Organization and Order of Business were excused from the conference pending the meeting of said committee.

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The Temporary Chairman announced the next order of business to be a response to the Address of Welcome by a Visiting Delegate, and appointed Governor Ernest Lister of Washington to deliver said address.

The Chairman: I now have the honor of introducing Governor Er-

nest Lister of Washington, who will be good enough to respond to the cordial welcome received by us from Governor Withycombe of Oregon. (Applause.)

ADDRESS BY GOVERNOR OF WASHINGTON.

GOVERNOR LISTER: Mr. Chairman, Members of the Conference, Governor Withycombe, Gentlemen: I want to thank the Chief Executive of the State of Oregon for his words of welcome, and especially for that part of them which commends us to stand together and speak well of each other. Governor Spry kindly asks me to respond to the words of welcome of the Governor of Oregon, as Governor of Washington.

It is undoubtedly fitting that the delegates to this Water Power Conference should gather together here in this beautiful Rose City of the Northwest. We are gathered together on a most important matter, one that reaches to all of the Western States gathered together here today. There is no question of more importance to the Western States than the development of the water power of those States.

The three Pacific Coast States with which I am most familiar, California, Oregon, and Washington, contain within their boundaries forty-three per cent of the water power possibilities of the United States, and add to those states the others represented here today, and we represent by far the greater proportion of water power to be found in the United States. The question involved is the method of development.

There have been differences of opinion in the past on this question, and probably there will be differences of opinion in the future. It is true, however, that as the result of the differences of opinion in the past there has been but little development along this particular line. And, I sincerely hope, as a result of the kind invitation extended to the other Western states by the Legislature of the State of Oregon, that we may be able, while we are gathered together in the session during the next two or three days, decide unanimously, if possible, upon some line of action that will bring about the proper development of these water powers.

We are not going to be able to get together in this matter if each one of us should insist upon our particular views being adopted to their fullest degree. In fact the earth holds together as a result of compromise between the forces of attraction and gravity exercised by the various bodies in the universe, and all results are necessarily obtained by processes of compromise in this world. And I sincerely hope that spirit will prevail during the sessions being held here in the City of Portland.

In conclusion again, we deeply appreciate the welcome extended to us by the State of Oregon. Personally, I know of but one better state in the Union, and that is the adjoining state to the north, of which I have the honor of being chief executive.

I do think, however, we have the right to say that the possibilities of the Western States represented here today are such that if we can develop the resources that we now have undeveloped, that inside of the next thirty years of the industrial development in the United States we will see the largest and greatest proportion of that development right here in these Western States which are represented here today. (Applause.)

The foundation for that industrial development is the water power possibilities of the West. Let us appreciate the responsibilities we have as delegates to this Convention, and by our acts endeavor to do that which will assist in bringing about permanent and satisfactory results and development along these great lines.

I thank you very much. (Applause.)

The Temporary Chairman asked the pleasure of the Conference with reference to the program of the speakers invited to address the Conference, invitations having been extended by the Governor of Oregon on behalf of the Oregon Delegation as a Committee on Preliminary Program.

Ex-Governor James H. Hawley, delegate from Idaho, moved that the speaking program be proceeded with pending the report of the Committee on Credentials.

Motion seconded and carried.

The Governor of Oregon submitted to the Secretary the list of speakers who had been invited by him to address the Conference, with notations thereon indicating the names of those speakers who had accepted the invitation; and a notation with reference to invitations to delegates to appear on the formal speaking program.

The list and notations were as follows:

Persons to Whom Invitation has been Extended to Address Water Power Conference

***Hon. Geo. E. Chamberlain of Oregon, *U. S. Senator.*
*Hon. John D. Works of California, *U. S. Senator.*
**Hon. John H. Roemer of Chicago, Ill.
Hon. William E. Borah of Idaho. *U. S. Senator.*
**Mr. Frank H. Short of Fresno, Cal.
**Mr. John C. Ralston of Spokane, Wash.
**Hon. Samuel H. Piles of Washington, *ex-U. S. Senator.*
**Hon. Reed Smoot of Utah, *U. S. Senator.*
*Hon. Oscar W. Underwood of Alabama, *U. S. Senator.*
*Hon. Wesley L. Jones of Washington, *U. S. Senator.*
*Hon. Franklin K. Lane, *Secretary of the Interior.*
***Hon. Lindley M. Garrison, *Secretary of War.*
†Hon. David F. Houston, *Secretary of Agriculture.*
**Mr. Henry J. Pierce, Seattle, Wash.
**Mr. S. Z. Mitchell of New York City.
*Mr. Joseph N. Teal of Portland, Ore.
**Mr. John H. Finney of Washington, D. C.
Mr. Clyde C. Dawson of Denver, Colo.
***Hon. Clarence D. Clark of Evanston, Wyo., *U. S. Senator.*

*Declined.
**Accepted.
***Tentative acceptance.
†In event of inability to come Mr. Houston to be represented by either Mr. Merrill or Mr. Graves.

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The Governor of Oregon also filed with the Temporary Secretary copies of the invitations, and copies of correspondence in which the Secretaries of War, the Interior and

Agriculture were asked to send representatives in the event of the impossibility of delivering their addresses in person, with the suggestions that the following be sent as such representatives:

WAR DEPARTMENT:

MAJOR S. T. ANSELL, *Judge-Advocate General*

DEPARTMENT OF THE INTERIOR:

DR. GEORGE OTIS SMITH, *Director of the Bureau of the United States Geological Survey.*

EDWARD C. FINNEY, *Public Lands Attorney for the Department.*

DEPARTMENT OF AGRICULTURE:

H. S. GRAVES, *Director of the Bureau of Forestry.*

O. C. MERRILL, *Chief Engineer of the Bureau of Forestry.*

From the list furnished by the Governor of Oregon, and from information received from invited speakers present, the Temporary Secretary compiled the following list of speakers and subjects, and submitted same to the Temporary Chairman.

ADDRESSES BY:

CLYDE C. DAWSON, Denver; "Developed Water Power—Ideal Conservation."

CLAY TALLMAN, *United States Commissioner of Public Lands, Department of the Interior*, Washington, D. C.

GEORGE E. CHAMBERLAIN, *United States Senator*, Portland, Ore.

SAMUEL H. PILES, *Ex-United States Senator*, Seattle, "State Ownership of Water Power."

HENRY S. GRAVES, *Chief United States Bureau of Forestry, Department of Agriculture*, Washington, D. C.

O. C. MERRILL, *Chief Engineer, Bureau of Forestry, Department of Agriculture*, Washington, D. C.; "Power Development on National Forests and Proposed New Legislation."

JOHN H. ROEMER, *Ex-Chairman Wisconsin Railroad Commission*, Chicago; "Term of Franchise Proposed in Ferris Bill."

JOHN C. RALSTON, *Member American Society of Civil Engineers*, Spokane; "Water Power and Its Relation to National Development."

JOHN H. FINNEY, *American Institute of Electrical Engineering*, Washington, D. C.

CLARENCE D. CLARK, *United States Senator*, Evanston, Wyo.; "Duties of Government Toward Development of the West."

REED SMOOT, *United States Senator*, Provo, Utah; "Federal Tax on Water Power."

W. E. BORAH, *United States Senator*, Boise, Idaho.

S. Z. MITCHELL, *Public Utility Banker*, New York City; "Why Financing Power Development Is Not Practicable Where Government Land Is Involved."

WESLEY L. JONES, *United States Senator*, North Yakima, Wash.

FRANK H. SHORT, Fresno, Cal.; "Constitutional Aspects of the Ferris Bill."

THE CHAIRMAN: Gentlemen, I have the honor of introducing to you the Honorable Clyde C. Dawson of Denver, Colorado. (Applause).

MR. DAWSON: Mr. Chairman and Gentlemen of the Conference: I will probably have no further opportunity during the course of my speech to wet my throat, and as I come from a state that is soon to go dry, I had better provide against the future (takes a drink of water).

Governor Spry suggests that I come over to Utah. That is what we will all have to do in a short time.

I am not one of those who have made it a custom of following manuscript in any sort of discussion, but as one who has been asked to speak upon this occasion, and to take part in these proceedings, I think that what I say should be said with considerable care, and therefore, I have reduced to writing some of the things I want to say, and insofar as I am able to do so, I will attempt to follow my manuscript, but if I find that I am not able to do so, I may throw it away and talk without it. (Reads from manuscript.)

DEVELOPED WATER POWER—IDEAL CONSERVATION.

Address by Clyde C. Dawson of Denver, Colorado.

MR. DAWSON: Mr. Chairman and fellow delegates: During the hearings last winter before the Public Lands Committee of the Senate the matter was so fully presented by those whose opinions were worthy of the highest consideration that I realize the practical impossibility of saying anything which is really new upon the subject. It occurs to me, however, that the subject matter for consideration is of such vital importance to all of the people of the public-land states and the country at large as to justify reiteration of those things which we believe to underlie a true solution of the matters up for consideration.

My understanding is that others eminently qualified to speak upon the various phases of water-power development will take up and discuss in detail the various branches of the subject and that, therefore, I am expected to confine my remarks to a general discussion of the subject.

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My chief interest in this matter grows out of the fact that I am, and for almost forty years have been, a citizen of Colorado, a state rich in undeveloped water power, fifty-eight per cent of whose area of sixty-five and one-half million acres is still classed as public lands, and whose future progress largely depends upon a right solution of this and related questions.

The people of my state feel that the attitude of the administrative branch of the Federal Government for the past eight or ten years as to the development of water power in Colorado and all the public-land states has been unwise, unauthorized by law, and not for the upbuilding of the states having undeveloped power sites or for the best interests of the country or the people as a whole. (Applause.)

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We do not question the good faith of those responsible for the Government's attitude and conduct; but we do question the wisdom of the policy pursued, and its legality under existing law, and we assert most earnestly and with confidence that legislation such as is proposed in the Ferris Bill will but aggregate present conditions by giving a semblance of legislative authority for the doing of that which we contend has heretofore been unauthorized by law and brought about by administrative usurpation and the perversion of existing laws.

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The latest official authoritative expression of my State upon the subject is to be found in Senate Joint Memorial No. 6 passed at the last session of the Colorado Legis-

lature, which reads in part as follows:

Whereas, It is provided by Article 16, Section 5, of the Constitution of the State of Colorado, that:

The water of every natural stream not heretofore appropriated within the State of Colorado is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the State, subject to appropriation as hereinafter provided; and by Section 7 thereof, that:

All persons and corporations shall have the right of way across public, private and corporate lands for the construction of ditches, canals and flumes, for the purpose of conveying water for domestic purposes, for the irrigation of agricultural lands, and for mining and manufacturing purposes, and for drainage, upon payment of just compensation; and,

Whereas, The above constitutional provisions were accepted by the Federal Government, when this State was admitted into the Union, and have been followed for over thirty-five years by the citizens of this State with full congressional approval, and have been affirmed by the repeated declarations of the Supreme Court of the State; and,

Whereas, It is destructive of the right so established for the Federal Government to condition grants of rights of way through such domain, necessary for the making beneficial use of such water, on requirements other than the constitutional requirements as above set forth; now, therefore, be it

RESOLVED, That we believe that any attempt by the Federal Government to exact in exchange for such rights any excess of the fair market value of the rights granted is in violation of the constitutional right of the State and impairment of the State's power to develop and control its own internal resources; and, be it further

RESOLVED, That the danger of monopolistic control of water powers, asserted as a reason for the exercise by the Federal Government of the above exactions in exchange for such right of way, does not exist, since the State, by the exercise of its fundamental rights to regulate rates and service can prevent monopolistic control, in full protection of its citizens; and, be it further

RESOLVED, That it is not only the right and duty, but also the exclusive privilege of this State to control the development of its internal resources.

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Resolutions and expressions of like tenor have time and again been passed by the Denver Chamber of Commerce, the largest and most influential body of representative citizens in the State.

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So that, whether they be right or wrong, the people of Colorado honestly and earnestly believe that all efforts on the part of the Federal Government to control, dominate, farm out, and dictate upon what terms the natural resources within our borders shall be developed is unwise, unfair and un-American, and not in accord with that genius of our institutions which has in the past one hundred years been responsible for the most marvelous

progress and development the world has ever seen. (Applause.)

If the people of Colorado are right in their view of the subject under discussion, then for the same reasons every state represented at this Conference should be in accord with us and we should stand as a unit in opposition to the legislation proposed, and to any legislation of a like character.

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We are not trying to retard development; that which we desire above all things is the fullest development of all of our natural resources, but we are convinced that this development will never come, nor will it ever be maintained upon a successful and proper basis until the underlying questions involved are settled right; and that settlement must recognize to the fullest extent the right of every state of the Union to stand upon an equal footing with all of the original states in control, disposition, management and domination of its natural resources.

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The question involved in the settlement of who shall control the development of the resources of the states, are in the judgment of many the most vital and important questions to our country that have been raised since the Civil War. This is undoubtedly true; for, aside from the purely material questions involved, there are those which go to the very foundation, the very fundamentals of our form of government. (Applause.)

While in this Conference we are primarily considering water power, I cannot overlook the fact that such legislation as is now proposed in reference to that subject is but one strand of a rope which the administrative officials and bureaucratic chiefs at Washington would braid to bind for all time all the resources which are still a part of the public domain within the public-land states.

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In the past we have hailed and quoted with pride the statement of the Supreme Court of the United States that this was "an indestructible Union, composed of indestructible States," and that "this Union was and is a Union of States equal in power, dignity and authority," and that, of necessity, "all new states were admitted into the Union upon an equal footing with the original States."

Such legislation as is now proposed inevitably leads to an undermining of the sovereignty of the state, to a weakening of its power to sustain itself, to a confiscation of a part of the fruits of its natural resources, to a withholding of those resources from the possibility of taxation, thus increasing the burdens upon all other property within the state. (Applause.)

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Should this situation be brought about, this Union will not be composed of indestructible states; this Union will not be composed of states of equal power, dignity and authority, nor will the states which you gentlemen in this Conference represent stand upon an equal footing with the original states.

The completely rounded scheme

which looks to the control of all of our resources upon the public domain would lead to the substitution of a servile tenantry (Applause) for an independent citizenship of owners, and would leave the destiny of our future growth and development to the arbitrary control of ever-changing officials in the far distant city of Washington. (Applause.)

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Primarily, a state is great solely because of the natural resources within its borders. The resources may consist of agricultural lands, mines, both of metal and coal, timber, water power and many other things.

Ultimately, a state is great and powerful in proportion to the extent of those natural resources plus their development by an energetic and independent citizenship, acting under wise and beneficent laws intelligently administered.

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From the foundation of our Government until within very recent years, it has been conceded as axiomatic that the best results both for the people of the states and the nation as a whole could be obtained by keeping clearly in mind that all things which were local in their nature could best be done and should be done by the states, and that only those things which were general in their nature and for the benefit of the people as a whole should be undertaken and performed by the Federal Government; that it was of prime importance that the constitutional division of powers as between the states and the Federal Government should be maintained, ever bearing in mind that the Federal Government is one of delegated powers, brought into existence by the suffrage and the sufferance of the states and their people, and that all powers not so delegated are reserved to the states and to the people.

Those who would now seek to override this distinction necessarily seek to rend the very fabric of the Constitution and the dual system of government established by it.

There are many among us that are old-fashioned enough to believe that this should not be done; that our advancement and accomplishments under true constitutional construction have justified us in saying that for a people such as ours the framers of our Constitution struck upon the best form of government that could be devised. (Applause.)

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One of the greatest statesmen of this generation, Elihu Root, has recently said, speaking of the authority which should properly lie in the Federal Government on one hand and in the states on the other:

> It is of very great importance that both of these authorities, state and national, shall be preserved together, and that the limitations which keep each within its proper province shall be maintained. If the power of the States were to override the power of the Nation we should ultimately cease to have a nation and become only a body of really separate, although confederated State sovereignties continually forced apart by diverse interests and ultimately quarreling with

each other and separating altogether.

On the other hand, if the power of the nation were to override that of the states and usurp their functions, we should have this vast country with its great population, inhabiting widely separated regions, differing in climate, in production, in industrial and social interests and ideas, governed in all its local affairs by one all-powerful, central government at Washington, imposing upon the home life and behavior of each community the opinions and ideas of propriety of distant majorities. (Applause.)

Not only would this be intolerable and alien to the idea of free self-government, but it would be beyond the power of a central government to do directly. Decentralization would be made necessary by the mass of government business to be transacted, and so our separate localities would come to be governed by delegated authority—by pro-consuls authorized from Washington to execute the will of the great majority of the whole people. (Applause.)

No one can doubt that this also would lead by its different route to the separation of our Union.

Preservation of our dual system of government, carefully restrained in each of its parts by the limitations of the Constitution, has made possible our growth in local self-government and national power in the past, and, so far as we can see, it is essential to the continuance of that government in the future.

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Among other reasons given for the proposed encroachment upon the authority and the rights of the state and its people, is that these natural resources belong to all of the people, and the administrative officials of the Federal Government seek to justify their action by claiming that they are seeking to prevent monopoly of such resources, and are doing so in their desire to protect the interests of all of the people.

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It has ever been easy to suggest specious reasons for the acquisition or usurpation of increased power by those in official position. (Applause.)

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Bureaucracy has ever grown by what it feeds upon. (Applause.) This was pointed out by that eminent statesman, Daniel Webster, as long ago as 1837, and that other eminent statesman, James G. Blaine, said:

> There is nothing of which a public officer can be so easily persuaded as to the enlarged jurisdiction which pertains to his office. If the officer be of bold mind, he arrogates power for purposes of ambition; and even with timid men power is often assumed as a measure of protection and defense. (Applause.)

And that eminent California lawyer and author, Gregory Yale, as long ago as 1867, said, in speaking of the Interior Department:

> There is no other branch of the Government with such inherent tendencies to judicial usurpation. (Applause.)

And that is just as true today, and truer of the Interior Department, as it was when it was said. A citizen, in their eyes, has grown smaller every day, and when a man from Washington or Colorado or Oregon starts to the Interior Department, or the Forestry Bureau,

the old spy-glass through which they used to look at him is now reversed with the little end turned towards him and he looks very puny and little to them. (Applause.)

But the very premise upon which those who seek an increase of Federal control base their claims is unwarranted by the facts. When they say these resources belong to all of the people, they use a catch phrase which, under analysis, will not justify the meaning which they seek to convey. (Applause.)

It is true that the legal title to the public domain rests in the United States; but that title is simply held in trust with the ultimate object that it shall be transferred to the people, who will develop it and thereby make possible the creation of, or the maintenance of independent states of the Union. It was said in Shively vs. Bowlby, 152 U. S. 1, 49:

> The territory is held by the United States for the benefit of the whole people, and in trust for the several states to be ultimately created out of that territory.

It was never intended that these public lands should be indefinitely held and exploited by the Federal Government; and, in so far as the resource under immediate consideration is concerned, water power, the Federal Government never had within a state, has not now, nor should it have, any control; for the water which is primarily essential to the creation of such power belongs to, and is under the control of the respective states, and their people, except for navigation.

In seeking to control the development and use of such power by reason of the existence of public lands along the streams, the administrative officers of the Government seek to do by indirection what they cannot do directly, seek to do that for which there is not and should not be any authority in law.

As a matter of law, as a matter of right, as a matter of governmental policy, this agency of a state's development should be under the control of the state within which it lies, and easements over the public domain, which are necessarily incidental to the use of the water, should go as a matter of course without restriction and without price. (Applause.)

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As to monopoly, the states properly have the inalienable right and authority to control and prevent monopoly within their own borders and to control and regulate the prices at which power shall be sold by public-utility corporations.

There is no more reason why the Federal Government at this time should seek to regulate and control the development of our water powers, no more reason why it should seek to place a charge or tax upon the development of this water power, the production from our coal, phosphate, oil, and other lands, than that it should have sought, in like manner, to have controlled and taxed the development of the fertile lands lying in the great Mississippi Valley. (Applause.)

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A wise Creator had distributed throughout this wonderful country

of ours varying resources in varying degrees.

From the earliest time until recently, it has been the policy of the Federal Government to facilitate the acquisition and development of the natural resources of the country, and when they were sufficiently developed to erect communities within which they were found into independent sovereign states with like responsibilities, duties and rights with all of the original states. (Applause.)

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It would have been just as fair to say that the rich corn lands of Illinois and Iowa, that the rich wheat lands of Kansas, Nebraska and Minnesota and other states should be leased out, controlled and dominated by ever-changing officials in the far distant city of Washington, (Applause) and that a royalty should be paid upon the products of these lands to the Federal Government, as now to say that the water power located in states like Colorado, Washington, Idaho and California should be controlled by Federal agencies and should pay tribute to the Federal Government. (Applause.)

Had such a policy prevailed in the past, we should not be meeting here in the beautiful city of Portland today, nor would there be anyone riding across this great continent on railroads that are the superior of any on a like magnitude in any other country in the world, but would be riding behind ox-teams, as did our fathers when they crossed the plains. (Applause.)

This nation is great only by reason of its component parts; no state can progress without helping the country as a whole; no state can be retarded in its growth, its development and its creation of wealth without working a proportionate disaster to all of the people, and to the country at large; and those who seek, by the action now proposed, to substitute that worst form of monopoly, absentee landlordism and bureaucratic control, (Applause) for development by the citizen under the proper laws and restrictions of his own state, are, in the judgment of many of us, not only working a grievous and serious injury upon the states themselves, but a like injury to our common country. (Applause.)

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The great impetus which this effort to control the natural resources of the public-land states has attained has been due largely to a false impression that has been built up by a persistent, consistent, publicity campaign, carried on for the purpose of leading the people to believe that they were being robbed of something which was their just due.

The people back of the movement were happy in the choice of the word "conservation" as the symbol of the propaganda which they espoused.

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No one finds fault with true conservation within its proper limits; (Applause) but we do find fault with that false conservation which has in fact been naught but reser-

vation, and has resulted in stagnation of development throughout the public-land states. (Applause.)

Nothing is conserved by withdrawing and reserving from use millions of horse power; (Applause.) nothing is conserved by tying up perpetually or for long periods of time those things which the people could properly use to advantage. (Applause.)

Every horse power that runs to waste today that might be used represents the destruction of so much coal, oil or other fuel; and this agency of creating power which might be the means of saving these other destructible agencies can be used and used over and over again, without any loss whatever.

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Instead of placing restrictions upon the development of water powers and the laying of a tax upon the same, the Federal Government should be glad to recognize rights of way free of cost, as it has in the past, under a more enlightened system, which would encourage the development of every possible horse power for which use could be found.

Every electrical development means an increased activity of industry in the locality served; farms may be irrigated with water that is electrically pumped; manufacturing may by this agency be made possible; cities and homes are lighted and thus made better places to live in; values of all kinds are increased by the availability of this modern necessity; so that, out of something which is in a sense was nothing there is with the addition of energy and capital brought into being that which not only benefits the community in which it is located, but something which goes to the upbuilding of the state and nation.

An appropriation of water is the making of the right to use water one's own by using it. It is not the ruthless taking of something for nothing. It is the application to beneficial uses, under the control of state laws, of one of the vital resources of the state which would otherwise remain unused, with an implied obligation on the part of a public-service corporation to perform the public service for which the appropriation was made, actual use being in all cases a basic condition to the right.

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Such developments are usually made by corporations. The company not only pays to the state a property tax, but there is paid to the Federal Government a corporation tax; and if the company be successful, the owners of its stocks and bonds in all probability pay a Federal income tax, so that from every standpoint the development proves of advantage to community, county, state and nation.

In recognizing the free use of necessary rights of way, neither the Government nor the people are giving up or losing anything. The Government, when it sells the land upon which such rights of way are located, makes no deduction in acreage or price because of such right of way, and what it gets in return is far in excess of the value of the use of the land involved.

Aside from any direct taxes it may secure from the company or its stockholders, there is the in-

creased development and settlement of one of the states of the Union, and in many instances the increased value of the lands in the neighborhood, still retained by the Government, and the more important asset that comes from the allegiance of a happy and contented people who feel that their community is going forward, and that their Government is in perfect accord with their hopes and ambitions.

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So, whatever may be our point of view, it would seem that every consideration should suggest the most liberal co-operation on the part of the Federal Government in bringing about the speedy development of every available water horse power for which there is a possible market.

But the proposed legislation would retard, if it did not wholly prevent such development. (Applause.) It is in fact an attempt by the Federal Government to exercise the powers of taxation and regulation upon industries within a state which are subject to state taxation and regulation.

It is an attempt to control and regulate the manner and purpose of an appropriation of water, which under our Constitution and laws is a matter subject to the exclusive jurisdiction of the state. (Applause.) It is, in force and effect, a usurpation of all these reserved governmental powers of the state. (Applause.) It is a violation of both the spirit and the letter of our Federal Constitution; (Applause.) and there is no higher or more solemn duty resting upon American citizenship than the conservation of that Constitution, and the preservation of its fundamental principles. (Applause.)

So that, whether this matter is viewed solely from the standpoint of policy, or in the light of a just and true interpretation of the Constitution, the states and their people should be left unhampered by Federal charges, restrictions and regulations, to manage and control their own internal affairs.

In no other way can this development of the water resources of the state take place; but, what is of far greater consequence,—in no other way can our peculiarly happy form of government be preserved and handed down in all its power and splendor to future generations. (Applause.)

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This phase of the question has been more amply discussed in a pamphlet recently issued by Mr. S. A. Bailey, of the Salt Lake Bar, who, in my opinion, has given most intelligent and thorough consideration to this and all related questions.

His discussion of this subject meets with my hearty indorsement, and I earnestly recommend a careful perusal of his pamphlet to all who are interested in the proper solution of this great problem.

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I am convinced that the people throughout the states other than the public-land states have no true realization of what the Federal Government is really trying to do under the guidance and direction of administrative officers in seeking

to segregate, tie up and control all of the resources situated upon the public lands in all of the public-land states. (Applause.)

It will help us to realize the ambitious scheme that is being put forward by the administrative officers and bureaucrats of Washington, if we will consider for a moment the mighty empire they seek to bring under their permanent control by the proposed legislation.

I have been furnished a statement which shows that there is in the aggregate 471,032,257 acres of public land in the following public-land states: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming.

This is more than twice the total area of 218,000,000 acres, which composed the thirteen original states constituting the American Union.

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While no one would go so far as to say that it is now possible for the Federal Government, by any means, constitutional or otherwise, short of war, to take possession of and seek to control all of the natural resources within all of the thirteen original states, yet, in principle, there is just as much reason to say that the Federal Government, in an effort to protect all of the people, in an effort to make the resources of these states pay tribute to the Federal Government, should take under its control and management, with the power to levy such taxes as it might see fit, all of the lands of the entire group of states which originally formed the Union, as to say that it could do what the proposers of the present line of legislation, as symbolized by the Ferris Bill, indicate they desire to do in reference to the public-land states.

If such a thing were proposed, would not the entire population of this great and free country of ours stand shocked at the very suggestion? (Applause.)

Just as well say that the 218,000,000 acres in the thirteen original states should be taxed and be under the domination and control of the bureaus of Washington as to say that over four hundred million acres now lying in the Western States should be under their domination and control and subject to their taxation. (Applause.)

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The Ferris Bill is objectionable for the following, among other reasons:

First: It leaves it in the uncontrolled discretion of the Secretary of the Interior, or some Federal officer in charge of the Federal lands, to say whether any development shall take place in the vast, vacant territory of public domain which now covers the public-land states like a pall.

No far distant officer should be clothed with such tremendous power. (Applause.) Those on the ground are best able to judge what development is wise, and such control as is exercised over the subject should be exercised by the state, within whose governmental functions the matter properly lies. (Applause.) This is particularly true in view of the fact that the

chief element in the creation of the power is the water, which is concededly under the control of the state whose laws necessarily govern its appropriation and use. This provision of the bill is plainly a direct encroachment upon the inherent governmental powers of the state, to declare what are public uses within its borders, and how such uses shall be regulated. It is wrong in both principle and policy. (Applause.)

If there were any real collision between the proprietary interest of the general government and the law-making powers of the state, clearly, as the Supreme Court has somewhere said, that which is not superior should yield to that which is superior. It was for the purpose of avoiding such supposed conflict that Congress in 1866 passed an act, which acknowledged and confirmed rights of way over public domain for the utilization of water for all beneficial purposes which are authorized by the local laws.

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Second: The limitation of fifty years in the proposed leases puts an abrupt end to a public use which in its nature should be perpetual, the very continuance of which the state authorities have the right and power to enforce. This limitation is also in conflict with the laws of those states in which beneficial use is the basis, the measure and the limit of the right to the water, and likewise it conflicts with the power of the state to declare what uses may be preferred above others.

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Third: The bill singles out for regulation by the Interstate Commerce Commission power companies which may be engaged in business within a territory or in two or more states, if their structures happen to touch upon the public domain, and leaves other interstate power companies unregulated, thus placing enterprises which are on the public land at a disadvantage in this respect, and defeating the declared purposes of the bill.

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Fourth: Section 5 provides for the acquisition of title to the lessee's plant by the United States itself, on a basis which expressly excludes certain well-recognized elements of value, and which, if not confiscatory, would certainly tend to discourage the investment of capital. If such plants are acquired by the Government and operated by it, we should have the anomalous situation of the Government competing with its own citizens in a commercial enterprise, in which it would have the unfair advantage of being exempt from taxation and state regulation.

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It is not my purpose, however, to go into all the objections to this bill and to this sort of legislation. That has been admirably done by that able lawyer, the Hon. Frank H. Short of California, in his critical analysis of the Ferris Bill. (Applause.)

My objections go deeper than to any specific provisions of the bill. Its whole tenor is contrary to the spirit of our free institutions and of our fundamental laws. (Applause.)

In its present form it is obvious, and hardly needs the testimony of practical men, that the bill will not encourage investment and development; but it is equally obvious, and should be recognized by every citizen, that the exercise of such powers by the Federal Government within the public-land states tends to reduce those states to mere provinces and to sap and undermine the very foundations of our Union.

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I well realize that there are some gentlemen interested in power companies who are extremely desirous of having Congress pass some bill under which they may reap the profits of financing and promoting these enterprises.

But this is not a question to be determined and settled by arrangements made and entered into between the power companies and the administrative officials in Washington.

It is a question which concerns all of the prople, and no legislation should be countenanced which tends to break down our constitutional form of Government. The question involved is one which concerns the conservation of the Constitution itself, and the rights and liberties of all the people.

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The advocates of this class of legislation may say that the criticisms by its opponents offer nothing of a practical nature in the place of the program which they are seeking to carry out. The professed purpose and aim of all are, indeed, identical,—to provide for the broadest possible development of the water power resources of the country.

All unite in saying that this is ideal conservation.

We think we have sufficiently demonstrated that the methods of the Ferris Bill will not produce the desired results. (Applause.) And when they ask us what we would substitute in its place, our answer is, that the existing acts of Congress properly construed, permit the development of these resources under the control and regulation of the local laws; that there should be no legislation which does not recognize and reaffirm the fundamental principle that the states have the right and authority to control their own purely internal affairs, (Applause) and that the title to the public lands is held in subordination to this rule of law.

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These very questions are now pending in the Supreme Court of the United States, the only final arbiter under the Constitution. Why should Congress now seek to make the confusion, brought about by administrative misconstruction, worse confounded by assenting to that misconstruction? (Applause.)

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There are many of our ablest living statesmen who now contend, as was contended years ago by Jackson, Benton and others, that the proper solution of this question is for the Federal Government to turn over to the states the title to all the remaining lands within their borders. In 1833 President Jackson said in a message to Congress:

On the whole, I adhere to the

opinion expressed in my annual message of 1832, that it is our true policy that the public lands shall cease as soon as possible to be a source of revenue, except for the payment of those general charges which grow out of the acquisition of the lands, their survey and sale—I do not doubt that it is the real interest of each and all the states in the Union, and particularly of the new states, that the price of these lands shall be reduced and graduated, and that after they have been offered for a certain number of years, the refuse remaining unsold shall be abandoned to the states and the machinery of our land system entirely withdrawn. (Applause.)

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However we may view this solution of the question, that is a matter that rests with Congress. But the jurisdiction over the public lands within the states is vested in the states not by virtue of any act of Congress, but by the fact of their being states of the Union, and by the express terms of the Federal Constitution.

If any act of Congress is needed at all to clear up the situation and permit the desired development, it would be a declaratory act, so plain in its terms as not to permit any misconstruction, and to the effect that rights of way over the public lands for any uses which are essential to the well being and development of a state, and which are proclaimed to be public uses by its laws, are recognized by the Federal Government, and that such rights may become vested by construction and use, and may be protected in advance of construction by the filing and approval of maps in the local land offices.

I think that every gentleman who has studied this question will consider that of the eight, ten or twelve acts passed since the first one of 1866, which was a declaratory act, and all of which have been declaratory acts—that these acts have practically been made necessary and have been enacted by Congress to overcome the administrative misconstruction that has been put upon these acts by the administrative department at Washington, D. C. We do not need some other law, but we do need a fair, true and intelligent construction of the real meaning of the acts which stand upon the statute books of our country, when construed in the light of the Constitution.

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Under such a wide and beneficent policy what a wonderful theater we people of the public-land states would have for our operations, with our broad upland plains, our majestic mountains and our beautiful valleys. (Applause.) The people of romance and of song, of daring and of courage have ever come from the highlands; and so, on questions whose right solution involves the very structure of our government, we should go forward battling unafraid for what we honestly and sincerely believe to be the right. (Applause.)

Our fathers and ourselves are of that people who have made this country what it is. (Applause.)

Whether we came hither from North, East or South, we love our common country. (Applause.)

We subdued this mighty Empire that lies within the borders of our states that they might take their place among the sisterhood of states on a free and equal footing. (Applause.)

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As has been well said, this land is a fit home for such a people as ours, a people born in the desire for liberty, raising on high the standard of freedom and justice to all. (Applause.)

They have, throughout their course, stood as the mightiest force for good the world has ever known; they have spread from the Atlantic to the Pacific and the islands of the sea; from the Great Lakes to the Gulf; they have crossed mountains and plains; have felled forests and caused the desert to blossom as the rose; and wherever they have gone they have carried their faith in God, their institutions and themselves; they have builded homes, churches and schools and have thrown to the breezes that beautiful standard of their country's faith, the Red, the White and the Blue. (Applause.)

Let us then not abandon the limitations of Constitutional Government by legislation that substitutes the will of ever-changing administrative officers and bureau heads for fixed rules of law. Let us remember Lincoln's statement that:

> A majority, held in restraint by constitutional checks and limitations and always changing easily with deliberate changes of popular opinion and sentiment, is the only true sovereign of a free people. Whoever rejects it does of necessity fly to anarchy or despotism.

That statement is as true today as when made, and it is our duty to take such action as to show that we still stand for a government of law and not a government of men; that the Constitution and its limitations are as potent with us as at any time in the past; that we are ready to render unto the nation all that is hers and likewise to the states all that is theirs. (Applause.)

THE CHAIRMAN: We will be glad to hear the telegrams and communications read, and the Secretary will please read them to us now.

The following telegram was received and read to the Conference by the Temporary Secretary.

Tonopah, Nev., Sept. 20, 1915.
Secretary Water Power Conference, Portland, Ore.:

I have been appointed a delegate by Governor of Nevada to your Conference. I accepted the appointment and assured the Governor I would attend. I now find it impossible to leave Nevada by reason of matters that have suddenly arisen over which I have no control.

I regret this deeply as I am in perfect accord with the Governor touching legislation that will be discussed and could therefore represent his views fully. I approve the general plan of the Ferris Bill as amended in the Senate Committee. The bill still requires some amendment which will no doubt be added by the Senate.

The only alternatives are state control or the Ferris Bill.

In view of southern and eastern sentiment, state control is impossible of accomplishment. The present control by the forest service under revocable permits is not only impracticable but intolerable.

As between the alternatives the Ferris Bill offers a proposition upon which capital can be raised and development accomplished.

I trust the Conference will view the matter from a practical standpoint and not from that of an idealist. You have my best wishes in your splendid efforts.

KEY PITTMAN.

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The following communication was submitted to the Temporary Secretary by the Governor of Oregon.

There being no objection, the Temporary Chairman ordered that same be read, and it was read.

UNITED STATES SENATE.
Committee on Fisheries.
Los Angeles, Cal., Sept. 15, 1915.

Hon. James Withycombe,
Governor, State of Oregon,
Salem, Oregon.

My Dear Governor: I am very sorry that my engagements have been such that it was not possible for me to attend the Conference of Western States to be held in Portland, on the subject of proposed legislation affecting the utilization of water power through the disposition of public lands. It is a subject in which I am very much interested and about which I have some very strong convictions.

I think the legislation now proposed is objectionable from almost all points of view. One of its worst features, in my judgment, is the attempt that is being made to take from the states the power of controlling their flowing streams and vesting that power in the national government. It is an attempt that should be vigorously contested by all of the Western States.

It is vital to the interests of the states where irrigation must be resorted to that they have the complete control of the use of the waters necessary for this purpose and the fixing of rates for such use. To vest it in the national government to be controlled by one of the Departments, or a commission, three thousand miles away, would be intolerable.

The legal phases of the question are thoroughly settled by decisions of the Supreme Court of the United States to the effect that the control of the flowing streams within a state is vested in the

state. That, I think, is very thoroughly demonstrated by the report made by the minority of the Committee on Public Lands of the Senate, published as Report 898, Part 2.

I had the honor to prepare this report at the request of the senators of the minority. It expresses the views entertained by them and by me.

Besides the fact that I regard this as a direct usurpation on the part of the national government, such legislation would lead to utter confusion in the attempt to deal with the waters of the streams within the states.

I believe the Bill as reported at the last session of Congress would be unconstitutional if it became a law. Such legislation is wholly unnecessary and would be detrimental to the best interests of the Western States particularly, and of the public generally.

It is one of the singular features of present conditions that representatives of the Southern States in the Senate and in the House of Representatives should be favoring legislation of this kind which is directly opposed to the doctrine of state rights. It is an insiduous and dangerous effort to centralize power in the Federal Government.

I sincerely hope that such influence will be brought to bear as will prevent the enactment of such legislation at the coming session of Congress.

Sincerely yours,
JOHN D. WORKS.

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The following telegram was handed to the Temporary Secretary by the Governor of Oregon.

There being no objection, the Temporary Chairman directed the Temporary Secretary to read same to the Conference, and same was read.

Denver, Colo., Sept. 20, 1915.

Governor James Withycombe, Multnomah Hotel, Portland, Ore.:

Convention of Investment Bankers Association of America this afternoon, without a dissenting vote, adopted the following:

"At the last session of Congress there passed the House of Representatives a bill providing for the occupation of the Public Domain in connection with water-power development known as the Ferris Bill. After being substantially changed and amended this Bill was later favorably reported by a majority of the Committee on Public Lands of the United States Senate. The sponsors for this proposed legislation stated that it was designed to promote and encourage the development of water powers and the use of the Public Domain in connection therewith and to remedy the existing unsatisfactory state of the law on that subject.

"We believe that no legislation will be effective which does not afford to the investor permanency and security of tenure with a positive legal assurance that no part of the investment will be confiscated. The tenure should be for at least fifty years and should continue thereafter unless revoked for cause up to such time as the Government might exercise its right of taking over the property of the company, and when this right is exercised it should only be by paying to the company the then fair value of all its property including everything to which the investment has actually been devoted.

"The Ferris Bill as we understand it as it passed the House of Representatives required the grantee to give the Government

an option on its property but on terms which deprived the company of substantial rights.

"First, the company was deprived of any appreciation in land values. In other words, although at the time of obtaining the permit to occupy a small fraction of the Public Domain the company might own in fee a large amount of land which had up to that time greatly appreciated in value, nevertheless as a condition of obtaining the permit from the Government the company was obliged to agree to sell to the Government all of its land then owned and thereafter acquired at original cost.

"Second, the company was also deprived of any investment which it might have made in so-called intangible elements — elements which are recognized by the Courts and Public Service Commissions as legitimate and essential.

"These provisions of the bill in our judgment would be absolutely fatal to any investment in water powers on the Public Domain.

"The Bill as reported by a majority of the Public Lands Committee of the Senate gives the Government an option upon the generating transmission and distributing system at its fair value —excluding going value. Going value is likewise recognized today by Courts and Public Service Commissions as an integral and essential part of the investment and its exclusion would result in confiscating the investment to that extent.

"A careful consideration of this Bill leads us to the conclusion that both in the form as passed by the House of Representatives and as reported by the Senate Committee it cannot and will not accomplish the expressed purpose of its sponsors, but that it will discourage instead of promote the development of water powers on the Public Domain. We believe it would be both unwise and unsafe for capital to invest in such enterprises under the terms of this Bill."

FREDERICK R. FENTON,
Secretary, Investment Bankers Association of America.

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The Temporary Secretary announced an invitation from the Portland Rotary Club to delegates, invited speakers and official guests of the Conference, to attend a luncheon to be given in their honor at 12 o'clock noon, September 21st, in the Crystal Diningroom of the Hotel Benson, with the Hon. George L. Baker, City Commissioner of the City of Portland, as Chairman of the Day.

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Senator Hart of Idaho submitted a preliminary report of the Committee on Credentials, which was read by the Temporary Secretary.

Preliminary Report of Committee on Credentials

We, the Committee on Credentials, beg leave to report that the following named delegates are entitled to seats in the Western States Water Power Conference:

ARIZONA:
HOWARD S. REED.
CALIFORNIA:
A. E. CHANDLER.
COLORADO:
A. P. ARDOUREL.
GEORGE E. WEST.
CLYDE C. DAWSON.
THOMAS TONGE.
DAVID ELLIOTT.
W. F. R. MILLS.
IDAHO:
JAMES H. HAWLEY.
FRED W. BERGER.
J. W. HART.
I. E. ROCKWELL.
DR. J. B. MORRIS.

MONTANA:
Senator Walsh.
J. B. Collins.
Sam D. Goza.
J. E. Erickson.
NEW MEXICO:
NEVADA:
W. M. Kearney.
NORTH DAKOTA:
John O. Hanchett.
D. V. Moore.
OREGON:
Governor James Withycombe.
W. Lair Thompson.
H. B. Huston.
Edgar B. Piper.
SOUTH DAKOTA:
UTAH:
Governor Wm. Spry.
W. D. Beers.
Senator Reed Smoot.
E. A. Wedgwood.
S. A. Bailey.
WASHINGTON:
Governor Lister.
M. C. Harris.
A. H. Imus.
W. V. Wells.
Phil H. Adams.
WYOMING:

J. W. Hart, *Chairman.*

Upon motion duly seconded, the preliminary report was adopted.

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The Temporary Secretary read the following telegram:

Cheyenne, Wyo., Sept. 20, 1915.

Secretary Water Power Conference, Portland, Ore.:

United States Senator Clarence D. Clark of Wyoming has been appointed by me to represent Wyoming at the Water Power Conference. He leaves for Portland tonight.

John D. Kendrick,
Governor.

The telegram was referred by the Temporary Chairman to the Committee on Credentials.

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Upon motion duly seconded, the Conference took a recess until 2 o'clock P. M.

The Governor of Oregon informed the Temporary Secretary that he had extended a formal invitation to the Hon. Thos. J. Walsh, United States Senator from Montana, to address the Conference as one of the invited speakers on the formal speaking program, and that he had explained to Senator Walsh that it was the original intent of the Oregon delegation and the Governor to forward to the Senator an invitation, but that the reason said invitation had not been extended at a prior date was that no invitations to address the conference had been extended to any who were known to have been appointed as delegates; that since the list of invited speakers had been completed several who had been invited and who had accepted the invitation had been appointed delegates, and that in view of the circumstances several delegates were now on the speaking program and he was only too glad to extend to Senator Walsh an invitation.

The Temporary Secretary submitted Governor Withycombe's report to the Temporary Chairman.

Afternoon Session, 2 o'clock, Tuesday, Sept. 21, 1915.

The Conference was called to order by the Temporary Chairman.

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The Temporary Chairman announced to the Conference that Senator Walsh had been invited to take a place on the formal speaking program.

The Temporary Secretary thereupon added Senator Walsh to the published list of invited speakers.

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Senator Thompson of Oregon announced that the Committee on Permanent Organization and Order of Business had completed its report, which he handed to the Temporary Secretary.

The report was read and is as follows:

Report of Committee on Permanent Organization and Order of Business.

Mr. Chairman:

Your Committee on Permanent Organization and Order of Business begs leave to submit the following report:

First: We recommend that permanent organization be effected by making the temporary officers of this Conference its permanent officers.

Second: We recommend that the Chairman appoint a Committee on Resolutions. Said committee to consist of one delegate in attendance from each state. The members of said committee to be selected and appointed by the Chairman upon recommendation of the delegations from each state.

Third: We recommend that all resolutions be introduced before 4 o'clock p. m. Wednesday, September 22, 1915, and be immediately read and referred to the Resolutions Committee without debate, and that no resolutions be received by this Conference after 4 o'clock September 22, 1915, except it is offered by the Resolutions Committee, and that no resolutions be acted upon until it has been considered and reported by the Resolutions Committee.

Fourth: We recommend that the Resolutions Committee render its report at the close of the general debate following the announced program, and that such report be made not later than noon of Thursday, September 23, 1915.

Fifth: We recommend that the Conference proceed by continuing the speaking program which has been arranged without

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GOVERNOR LISTER: I move that an amendment be made to the report of the Committee on Permanent Organization and Order of Business, and that it be adopted except that the words "with the consent of the Convention" be stricken out, so it will fix the time limit to fifteen minutes absolutely. With the large number of delegates present I think that we can all readily see that it is going to be impossible for all of us to have an opportunity to speak on this most important

subject if we have unlimited time given to those participating in these discussions. I think we ought to fix the time limit at fifteen minutes that anybody can have for reading his paper. I think that that will be sufficient for anybody to express any thoughts that he may have upon the subject.

MR. CHANDLER: I second the amendment.

SENATOR THOMPSON: I want to say a few words in explanation of the form in which this report is submitted. I will say that this question occurred to us and that we gave it very careful consideration. It seemed to us that there might be some gentleman, such as the forester of the United States Agricultural Department, or Senator Smoot, or Senator Walsh or Mr. Tallman who might have some things that were of vast importance for us to hear and it might be desired by some of the gentlemen to make lengthy replies to remarks that are made here in the course of the meeting, and that fifteen minutes would not be time enough for them to do so. I want to say that this subject occurred to us, and that we thought that there should be only fifteen minutes' time allowed to the ordinary speaker but that in cases where more time was needed it should be given. In all fairness to these gentlemen, under proper circumstances, they should be given more than fifteen minutes. It should be given only in cases where it is really necessary, however.

CHAIRMAN SIRY: Is that explanation proper and sufficient, Governor Lister?

GOVERNOR LISTER: I think it is a mistake to extend the time over fifteen minutes, even with that explanation.

THE CHAIRMAN: Gentlemen you have heard the motion that the debate after the reading of papers be confined to fifteen minutes duration.

MR. ROCKWELL: The committee considered that question in drafting its report, Mr. Chairman. The committee not only carefully considered the question but they discussed it fully and it was considered a most important thing by us and we decided that the report should read, "with the consent." At a special request from the members of the Conference the speaker might proceed for five or ten minutes longer. This would leave the door open so that he might continue if the Conference desired him to do so. Otherwise he could not proceed. It should be with the special consent of the Conference that the time limit for speeches be extended beyond fifteen minutes.

GOVERNOR LISTER: Mr. Chairman, you and I can remember a Conference wherein, a short time ago, discussion by all of the delegates present was not possible as the result of so much time being taken up by discussion by certain few delegates. It seems to me that in fifteen minutes' time anything that may be necessary to be said in order to answer argument made from the floor is enough. I feel sure that any answer necessary may be made in the period named.

There are going to be many, many delegates here who will feel,

at the close of the convention, that they have not had an opportunity to have the floor as much as they would like. I cannot but feel that fifteen minutes' time in a general discussion for anyone desiring the floor is sufficient.

SENATOR THOMPSON: I agree with the last speaker that ordinarily fifteen minutes is sufficient time, but where it is not sufficient, what are you going to do then?

GOVERNOR LISTER: Here is the situation. The best time to settle the proposition is now, rather than when the speaker shall be on the floor. Naturally, many speakers become so much interested in their subject that they do not appreciate the amount of time that they occupy on the floor, and do not appreciate at the time how quickly their time goes by. We are here in order to give everybody an opportunity to be heard on this important question, and if this report goes through in the shape that it is now presented in these resolutions, I feel sure now, that many delegates will feel at the close of the Convention that they have not had an opportunity to speak.

SENATOR THOMPSON: Would you be satisfied with the words, "unanimous consent" of the Convention?

GOVERNOR LISTER: Yes, sir, it would meet with my entire approval.

The Temporary Chairman directed the Temporary Secretary to insert the word "unanimous" before the word "consent" in the report, and the word was inserted.

The question on Senator Thompson's motion was put, and the motion was carried unanimously.

Senator Hart of Idaho announced that the Committee on Credentials had completed its final report, which he handed to the Secretary.

The Temporary Secretary read the report, which was as follows:

Final Report, Committee on Credentials.

We, the Committee on Credendials, beg leave to report that the following named delegates are entitled to seats in the Western States Water Power Conference:

ARIZONA:
HOWARD S. REED.

CALIFORNIA:
A. E. CHANDLER.

COLORADO:
A. P. ARDOUREL.
GEORGE E. WEST.
CLYDE C. DAWSON.
THOMAS TONGE.
DAVID ELLIOTT.
W. F. R. MILLS.

IDAHO:
GOVERNOR M. ALEXANDER.
JAMES H. HAWLEY.
FRED W. BERGER.
J. W. HART.
I. E. ROCKWELL.
DR. J. B. MORRIS.

MONTANA:
SENATOR WALSH.
J. B. COLLINS.
SAM D. GOZA.
J. E. ERICKSON.

NEW MEXICO.

NEVADA:
W. M. KEARNEY.

NORTH DAKOTA:
JOHN O. HANCHETT.
D. V. MOORE.

OREGON:
GOVERNOR JAMES WITHYCOMBE.
W. LAIR THOMPSON.
H. B. HUSTON.
EDGAR B. PIPER.

SOUTH DAKOTA:

UTAH:
GOVERNOR WM. SPRY.
W. D. BEERS.
SENATOR REED SMOOT.
E. A. WEDGWOOD.
S. A. BAILEY.

WASHINGTON:
GOVERNOR LISTER.
M. C. HARRIS.
A. H. IMUS.
W. V. WELLS.
PHIL H. ADAMS.

WYOMING:
CLARENCE D. CLARK.

NEBRASKA:
GEORGE LYON, JR.

Respectfully submitted by the Committee.

JNO. W. HART,
Chairman.

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SENATOR HART: I move you that the Report of the Committee be adopted as read. I will just say a word if you will permit me. Mr. Lyons, of Nebraska, has just arrived in the city with a notice of appointment by the governor of his state as a delegate to this Conference. Your committee thought it wise to insert his name in this list.

THE CHAIRMAN: That was proper.

On motion of Senator Hart, duly seconded, the report was adopted unanimously.

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Upon motion made, duly seconded, and carried unanimously, the delegates whose names were reported as accredited by the Committee on Credentials were declared to be the permanent delegates of the Conference; the Temporary Officers were declared to be the Permanent Officers of the Conference, and the Rules adopted in the report of the committee on Permanent Organization and Order of business were declared to be the Rules of the Conference.

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The Permanent Organization was thus effected, with Governor William Spry of Utah, Chairman, and C. C. Chapman of Portland, Oregon, Secretary.

ADDRESS OF HONORABLE CLAY TALLMAN

Commissioner of the General Land Office.
Representing the Department of the Interior.

THE CHAIRMAN: The first gentleman upon the program this afternoon is the Honorable Commissioner of Public Lands, representing the Department of the Interior, and I have great pleasure in introducing Honorable Clay Tallman.

Gentlemen of the Convention, Honorable Clay Tallman. (Applause.)

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MR. TALLMAN: Mr. Chairman and gentlemen of the Convention. I am quite sure that it will be interesting to all of you to observe in the flesh one of the gentlemen whom you have heard so picturesquely described as a "Washington Bureaucrat" by my friend, Mr. Dawson, this morning. I want to say first that I understand that I am here wholly as the result of the courtesy of the management of this Conference, and that I am not a part of it in any sense, although probably as intensely interested in it and in its subject matter as any one of you, and I want to assure you that I will follow what is said here as closely as anyone present. I want to say, therefore, that I greatly appreciate the courtesy extended to me in being invited to speak at the Conference, and, in behalf of the Secretary of the Interior, I want to express his appreciation of the courtesy extended to him and his department in being invited to be present.

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I take it from the opening addresses that in a large degree this meeting seems to have been called for the purpose of formulating a protest against the principles of what is known as the Ferris Water Power Bill. I have come to that conclusion since the opening of the Conference.

My understanding was originally that this was a meeting called to consider the facts pertaining to the water power situation with a view to evolving what would seem to be the best plan for the development of our water powers and the plan most conducive to the development of our Western States.

So, I must say at the outset, in order to be perfectly frank, that if the meeting is called for the purpose of voicing a protest against the general principles of the Ferris Bill as a whole, then, I am forced to state that I am not in harmony or sympathy with the object and purposes of this Conference. (Applause.)

If, however, we are to spend some time in looking into the facts with a view to making such changes in the Ferris Bill, or even in changing

the Ferris Bill in its entirety, if such changes appear to be desirable after a careful and honest consideration of the facts involved, I shall be only too glad to listen to all that is said on that basis and with that purpose in view. There is but little that I can say, or should say, it seems to me, at this stage of these proceedings.

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So far as the Secretary of the Interior is concerned, there is no gainsaying the fact that with his present light and as he understands the situation, with perhaps an extraordinary opportunity to understand the situation, and being a man of extraordinary ability to see and understand a situation when it is presented to him,—the Secretary of the Interior, I say, stands for the general principles of the Ferris Bill.

It need not go under the name of the Ferris Bill, or under any other particular name, but in so far as present and existing conditions are concerned, I think I am perfectly safe and justified in saying that the Secretary of the Interior believes that we should not, in the interests of the Federal Government, or of the state, or of the people,—vote away or grant away power sites in perpetuity. (Applause.) And that seems to be the crux of this whole question. ÷ ÷ ÷

I am not clear, nor can I well be until after the Conference has proceeded further, as to what you gentlemen who are opposed to the principles of the Ferris Bill, want. I have been trying earnestly to ascertain it.

I note that one of the preceding speakers says that we do not need any more legislation if the Bureaucrats will only give the proper construction to existing legislation. I have read certain pamphlets and books written recently which say that "we are ready to accept the Ferris Bill in many of its features and principles, but we want to change some things in it to meet our views."

And we have heard here today still another view expressed, that the whole business, power sites, land and all, now designated and understood as public lands, the title to which is still retained by the Federal Government, should be turned over in their entirety to the states.

So that, of those who are not in harmony with the Ferris Bill, we have, already here, I should say at least three, and probably there will be more, separate and distinct views of what should be done in lieu of what the Ferris Bill proposes to do. Those things are, in a large degree, inconsistent with each other, and impossible to be worked out together.

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You are well aware that the present law under which power sites are granted on the public domain provides clearly that the Secretary of the Interior, or, if it be in a Forest Reserve, the Secretary of the Department of Agriculture, may grant a permit to develop and use a specified portion of the public land for power purposes.

That act expressly and definitely provides that any permit granted thereunder shall be revocable at the

pleasure of the Secretary of the Interior or Secretary of Agriculture as the case may be. The Secretary of the Interior generally has held that under that language there resides in him a right to revoke such a permit.

Now, we may have been wrong in so construing it, but that is our judgment as to the clear meaning and intent of the language of the act.

The Secretary of the Interior, and almost all of the power men with whom I have discussed this question, believe,—(and most of them at one time or another, directly or indirectly, or by attorneys, have been in my office and have gone over this thing personally with me in the last two years), that a revocable permit—revocable at the pleasure of any Government official without cause—necessarily is not conducive to development, and is not conducive to investment of capital in power propositions. That view looks reasonable to us. We believe and are strongly of the opinion that a revocable permit is not the best thing, and we believe that we ought to get rid of it by some other form of legislation. (Applause.)

We say, therefore, that it is our view, first, that we need some legislation, and we need it because the Act of February 15, 1901, is unsatisfactory, particularly in the respect mentioned.

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The Right of Way Laws and the Permit Laws are unsatisfactory in other minor respects in that they are out of harmony in many details. I refer to the Act of 1891, by which rights of way for canals and ditches are granted. But I will not discuss these minor details. The first thing is, that existing legislation is unsatisfactory in that it provides for a revocable permit.

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Now, the question arises, assuming that we do need a change, what form should that legislation take?

Manifestly, this first question to which we have referred is one of the first to consider in new legislation, namely—any new law which we devise should have as one of its primary purposes a definite and certain fixed period during which the right to develop power is granted.

Secondly, how long should that period be? That is a question of varying opinion. But the logic of the situation seems to indicate and to argue that it should be long enough for the power developer to reap the full benefit of his investment, and long enough to cover the possible period, under existing business and commercial conditions, of any bond issue under which he may be operating, for the purpose of raising funds for the construction of the project in question. So we say that the first requisite in the new legislation is to have definite tenure for a sufficient period to admit of financing the proposition on a practicable business basis.

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We say secondly, that at the end of that period the government—(when I say government in this instance I mean either the State or Federal Government, depending on who shall have control under existing legislation at that time) should

have the right to retake and recapture and get back these valuable franchises and privileges.

Not as a gift, not confiscated—but take it back at a valuation placed on it on a basis which is fair to the man who put his money in and will give full protection to him, and yet so that these great resources will not forever get beyond the reach of the people. (Applause.)

So that is the next proposition—the right to retain control of these resources and to get them back under fair conditions.

In so far as revenue is concerned, we believe that any revenue that may be derived from this lease at the outset should be little more than nominal, so as to give the water power developer every possible opportunity to develop his land and to treat the public right and later on, when the time shall have arrived for the income to be more than nominal, when the income is substantial, there is no doubt that the state has an interest in this and should have a proportion—and a fair proportion of the income. Personally, I would not object to having the states receive all of the net income to be derived from such privilege. As a general proposition I do not think it can be truthfully said that it is contemplated in any federal legislation, or in any legislation for which the Department stands, for the question of the income to be brought in as the principle feature of this legislation. I do not think that it is a very important part of this legislation.

The purpose of the charge is to control the operation as far as it may be necessary, to provide such income as will enable the Federal Government by the operation of the concern to reimburse the state for the taxes which it might otherwise receive and to furnish funds for other lines of development in the West, such as reclamation of arid lands.

It seems to me that those are the basic, fundamental and underlying principles of the bill known as the Ferris Bill and the legislation which the Secretary of the Interior is standing for. There are many other features, many lesser details, which I will not take the time to discuss, but which I apprehend most of the men here are familiar with. I deem it proper for me, at this time, only to state what I understand the Secretary of the Interior stands for.

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I have only one other thought that I care to express today, and, that is that it would seem from some of the discussions here that we might well believe that Secretary Lane and his associates, having to do with these western questions, have entirely forgotten that they ever lived in the West and that they are your worst enemies.

We are charged with trying to get something—trying to get power and trying to exercise it wholly in a way unconducive to the best interests of these western states! I believe, however, leaving myself out of consideration entirely, that the men who are standing for the Ferris Bill and the principles of the Ferris Bill, generally speaking, are men who come from these western states

and who are as much interested in this western country as you are, or as anybody else, and are men well versed in our affairs and whose interests are in the West—they simply do not see the thing in the same way. Are we not, then, forced to the conclusion that there is a fair difference of opinion on the facts and the better policy to be pursued?

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All I can ask of you, gentlemen, is to approach this subject and draw your conclusions in that frame of mind. I can only say further that no man among you, or no man in the West, has a more comprehensive and accurate grasp of the situation in this Western country, and there is no man among you who is more interested in it, or who is more in sympathy with your interests than Secretary Lane. (Applause.)

THE CHAIRMAN: The next gentleman on the program was to have been Senator George E. Chamberlain of Oregon. The Senator, however, has made the request that his speech go over until tomorrow morning, which request was granted.

The next gentleman who will address us is former United States Senator Samuel H. Piles of Washington. (Applause.)

Gentlemen, former United States Senator Samuel H. Piles. (Applause.)

STATE OWNERSHIP OF WATER.

By Former United States Senator Samuel H. Piles, of Seattle, Washington.

Mr. Chairman and Gentlemen of the Convention: In discussing the subject assigned me, State Ownership of Water, I wish to say at the outset that nothing personal is intended by my remarks. I have no criticism whatever to make of officials or official conduct. I speak merely as a citizen, in advocacy of a policy which, as it seems to me, is right and just, and which, after all, is best not only for the people of the states, but for the people of the United States as a whole.

No man in this audience has a higher regard for the Secretary of the Interior than I have. I was much gratified when he was appointed to the great office which he now occupies, for, knowing Mr. Lane as I do, I felt that his office would be administered with great ability; and I have had no reason to change my views of our worthy secretary. It is, however, a matter of regret to me that the Secretary of the Interior, in common with a number of other gentlemen, is of the opinion that the government of the United States should control for the people of the several states the waters which rightfully belong to them. (Applause.)

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Until recent years no one doubted, much less did anyone question, the fact that the states own the waters which flow within their respective borders, subject to certain rights granted the Federal Government and those possessed by riparian owners by virtue of the laws of the respective states. And no one doubted, much less did anyone question, the right of the people to enter upon the public lands of the United States not devoted to particular purposes such as forts, arsenals, navy yards, etc., and appropriate, pursuant to state laws, the waters of the streams flowing through such lands, for beneficial uses.

Indeed, the industrial, mining, milling and agricultural life of the states demanded and demands the untrammeled exercise of this right under their authority.

Notwithstanding the fact that a number of propagandists contend that the United States, and not the states, own these waters,—one of the greatest natural resources that we have, if not the greatest,—there is not the slightest foundation for the contention.

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Every state admitted into this Union since the adoption of the Constitution was admitted upon an equal footing with the original thirteen states, and as the people by the Constitution reserved unto themselves all power not granted to

the Federal Government and that necessary to enjoy the granted powers, it is perfectly clear that the states not only never intended to surrender, but in fact never did surrender to the General Government all power with respect to the life-giving control and disposition of their waters; but that the states surrendered only such rights as are necessary to the exercise of the constitutional powers granted the General Government.

In Scott v. Lattig, 227 U. S., 229, the Court, speaking of the ownership of lands underlying navigable waters, said:

> Each new state, upon its admission to the Union, becomes endowed with the same rights and powers in this regard as the older ones.

In Coyle v. Oklahoma, 221 U. S., 559, the Supreme Court says:

> This Union "was and is a union of states equal in power, dignity and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself. To maintain otherwise would be to say that the Union, through the power of Congress to admit new states, might come to be a union of states unequal in power."

In Mobile v. Eslava, 16 Peters, 234, the court said:

> The original states possessing this interest in the waters within their jurisdictional limits, the new states cannot stand upon an equal footing with them as members of the Union, if the United States still retains over their navigable waters any other right than is necessary to the exercise of its jurisdictional power.

This doctrine is affirmed in numerous decisions of the Supreme Court of the United States which I have not time to cite upon this occasion.

It is clear from the adjudicated cases that the states own: First, the waters in the navigable streams of the states, subject to the paramount right of commerce and navigation which the people granted to the National Government, and such riparian rights as may exist under state law; second, all the waters in the non-navigable watercourses within their limits, subject to the right of the Federal Government to use the same when necessary to improve and preserve the navigability of the navigable waterways, and subject also to the rights of riparian owners in those states where the doctrine of riparian ownership obtains.

That the sovereignty and control over and title to the waters of both navigable and non-navigable streams is in the state, subject to the rights heretofore stated, is clearly established by the following, among many other decisions of the Supreme Court of the United States:

Martin v. Wardell, 16 Peters, 367
Pollard v. Hagan, 3 How., 212
Barney v. Keokuk, 94 U. S., 324
Shively v. Bowlsby, 152 U. S., 1
Kansas v. Colorado, 206 U. S., 46
Jennison v. Kirk, 98 U. S., 45
Broder v. Water Co., 101 U. S., 274
Gutiers v. Albuquerque Co., 188 U. S., 445
Boquilla Cattle Co. v. Curtis, 213 U. S.,339.

This water ownership in the states, and this right of entry upon and appropriation of the waters flowing through the public domain, is founded very largely upon the law and the fact that the United States hold the public lands not in

their sovereign capacity, but solely as proprietor; that is to say, in the same capacity in which every citizen of the states owns his land.

Does anyone believe that the people of the original states, who were exceedingly jealous of their rights, would have surrendered to the Federal Government not only the absolute ownership of, but the unquestioned power to tax, to the great detriment of the states, the use of their waters? To attribute any such intention to them is to impeach not only the intelligence but patriotism of some of the ablest and most patriotic men that lived in that or any other age.

Had they intended that the Government should have the right to levy tribute upon their greatest and most useful natural resource, and thereby make the growth and development of the states dependent upon the will of some bureau of the General Government, the men of that day would have said so in no unmistakable language. The fact that no such power is conferred, and that the United States is a government of enumerated and delegated powers only, is conclusive that the people of the states did not grant such power to the Federal Government, and that they would not have granted it had they been importuned to do so. (Applause.)

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In territorial days we had no power of local self-government except that conferred by the grace of Congress, for the Federal Government legislated for us in two capacities, first, as sovereign, and second, in its municipal capacity, as the states legislate today for the cities which lie within their borders. In those days, the national congress had the power to annul any law passed by our territorial legislatures. But when the territories were admitted as states, they were admitted upon an equal footing with the original states. They then became invested with all the right of legislation with respect to the sovereign and municipal power of the state, formerly exercised by the national congress.

Legislation concerning the control and use of the states' waters for beneficial purposes is municipal in character, and cannot be rightfully exercised by the Federal Congress or any legislative body other than that of the legislature of the state. (Applause.)

In Pollard's Lessee v. Hagan, 3 Howard, 212, the Court, in the course of its opinion, says:

> When Alabama was admitted into the Union on an equal footing with the original states, she succeeded to all the rights of sovereignty, jurisdiction and *eminent domain which Georgia possessed at the date of the cession*, except so far as this right was diminished by the public lands remaining in the possession and under the control of the United States for the temporary purposes provided for in the deed of cession, and the legislative acts connected with it.
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> Nothing remained to the United States, according to the terms of the agreement, but the public lands. *And if an express stipulation had been inserted in the agreement granting the municipal right of sovereignty and*

eminent domain to the United States, such stipulation would have been void and inoperative, because the United States has no constitutional capacity to exercise municipal jurisdiction, sovereignty or eminent domain within the limits of a state or elsewhere, except in the cases in which it is espressly granted.

This principle has been recognized by numerous decisions of the Supreme Court of the United States, and many decisions of our highest state courts.

In Fort Leavenworth R. R. Co. v. Lowe, 114 U. S., 525, the Court said:

> The United States therefore retains, after the admission of the state, *only the rights of an ordinary proprietor;* except as an instrument for the execution of the power of the General Government. That part of the tract which was actually used for a fort or military post is beyond such control of the state by taxation or otherwise as would defeat its use for those purposes. So far as the land constituting the reservation was not used for military purposes, the possession of the United States was only that of an individual proprietor. *The state could have exercised with reference to it the same authority and jurisdiction which she could have exercised over similar property held by private individuals.*

The government, from its foundation to within a recent time, has assented without question to the exercise of those rights by the people when acting under the laws of the territories as well as under the laws of the states. Prior to 1866, Congress had taken no action on the subject, but in that year it passed a law recognizing and affirming the appropriation of easements over the public lands by the citizens of the respective states, both by custom obtaining and by the laws of the respective states.

In Broder v. Water Co., 101 U. S., 274, the Supreme Court, speaking with reference to the exercise of rights of way, etc., over government land by the people pursuant to custom and state legislation, said:

> They are rights which the Government had by its conduct recognized and encouraged and was bound to protect before the passage of the Act of 1866. We are of opinion that this section of the act which we have quoted *was rather a voluntary recognition of a pre-existing right of possession, constituting a valid claim to its continued use, than the establishment of a new one.*

No one will dispute the proposition that neither man nor government can rightfully sell another's property; and as the states own the water, the government has nothing to sell. To illustrate:

The states own the beds of all navigable waters. The government may, nevertheless, in virtue of its paramount control of navigation, excavate and remove or cause to be excavated and removed, the soil underlying such waters, for the purpose of improving navigation and promoting commerce, even to the destruction of marine life and against the will of the states.

But it will not be contended that the United States can lawfully remove or authorize the removal of such soil for commercial purposes

or exact compensation for the privilege granted, without the consent of the state. It is therefore obvious that as the United States does not own the waters, they cannot exact compensation from our people for the use of our own property for commercial purposes.

The ownership of the states of the water within their limits means that the states have, as we have seen, the right, subject to the qualifications heretofore stated, to appropriate or authorize the appropriation of such waters for all uses beneficial to the state, unhampered by federal control.

This power of local self-government is one of the treasured rights of the American people, a right not to be frittered away at the behest of those who feel that they are more capable of administering our affairs than we are ourselves. It is but just and natural that we should assert our sovereign rights as states, for when our self-reliant, courageous sons reach the age of twenty-one, they quickly throw off the yoke of paternalism, feeling, as they rightfully should, that it is for them, and not their parents, to carve out their future. This spirit has given us greater men and a greater nation than we otherwise would have had, and so when we quit our territorial minority and were admitted into the Union, on an equal footing with the other states, we naturally felt that we had, and we now keenly feel that we have, the right to make our own laws for the development of our own states and the government of our own property and natural resources. (Applause.)

It is clear from the decisions of the Supreme Court of the United States that the flowing waters belong to the respective states, subject to the Government's paramount right of commerce and navigation. There is, therefore, no room for discussion on this point among well-grounded lawyers.

It would seem, therefore, to be not only idle but unjust, to argue that we should be deprived of the right to solve our own problems respecting the conservation and regulation of our own resources. Some, however, have the temerity to assert that we are incapable of doing this, and that we need a guardian to protect us from our own folly.

The wonderful progress that has been made in this western country, and the high type of our intelligence and citizenship should forever silence such ignorant and arrogant detractors. Let those who advance this idea understand that the spirit of the West is not yet dead, and that if we should ever reach the point in our history where we shall need a guardian to protect us, we shall be able to find at least one man among our citizenship who will act in that capacity for us.

Reference was made today to the fact that the cities of the West at one time granted perpetual franchises to street railways and other public service corporations over our public streets. The fact that we have not conferred any such franchises for many years ought to be persuasive evidence of our ability to govern ourselves at the present time. It has long been asserted

that public service franchises in the western cities are now so carefully guarded in the interest of the public that they are no longer attractive to the investor.

But to those who fear that the legislatures of the western states will fritter away our rights to some scheming corporation for a mess of pottage, I would call attention to the fact that every water-power state, so far as I know, has both the initiative and the referendum.

Those, therefore, who favor a long-distance bureaucratic form of government, upon the alleged theory that the legislatures of the states cannot, in their opinion, be trusted to protect the rights of the people, should at once divest themselves of their fear and trembling, because if the legislature does not pass a law satisfactory to the people, the people can repeal it, under their power of referendum, or they can, under the power of the initiative, originate and themselves pass a law which will in their sovereign judgment best protect and permit water-power development for beneficial purposes in the water-power states. So, gentlemen who oppose us must oppose us, not through any fear of the legislatures in the respective states, because, as we have seen, the people have the matter in their own hands in this western country, but because they think the Federal Government should take from these western states the right to do that which all the states east of the Mississippi River have done, namely, make use of their water power in non-navigable streams in the advancement of their growth and development, unhampered by the Federal Government. (Applause.)

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We have already seen that the waters belong to the states through whose borders they flow, subject, of course, to the Government's paramount right of commerce and navigation. This right we would not disturb if we could, but as the United States have no constitutional right to engage in the water-power business or to appropriate the powers of the states with respect to the development and beneficial use of the states' waters, because the Government happens to own as a simple proprietor and not otherwise the lands or part of the lands through which our waters flow, we are here to protest against this threatened encroachment and unjust discrimination. If all the other states of the Union had been forced to do as we are going to be forced to do, according to the statements of some, we would make no complaint, because the western states have neither asked nor received any favors at the hands of the Federal Government not accorded every other state similarly situated. And let no one think for a moment that either the East or the South will vote to deprive these western states of a single right, when they understand the true situation. It therefore becomes our duty to take the stump and inform the people of the country what our rights are and what injustice threatens us.

As the judge who sits upon the bench should never violate the law,

however great the temptation, because of the high example he must set, so our Government should never transgress the Constitution, because of the love and reverence of the people for that great and sacred instrument which is supposed to guard their rights and liberties. (Applause.)

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Reference has been made to Alaska. This is indeed unfortunate, for it must be admitted by all familiar with the situation that Alaska, as great and as wonderfully rich as it is in the hidden treasures of the earth, has become practically paralyzed by reason of the paternalistic hand that was laid upon it about ten years ago in the name of so-called conservation. (Applause.)

The population in that inviting land has decreased, instead of increasing by leaps and bounds as it would have done had the pioneers been left to solve their own problems.

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Gentlemen, few men have succeeded in this life who were not compelled to rely upon themselves.

No government has ever stood the test of time that was not made up of strong, self-reliant men and women; and the majority of those who have met here today are a living protest against a system of bureaucracy that would undermine not only the character of our people but the glory of our country. (Applause.)

This is not a question of the motive of men who come and go in the administration of our national affairs. It is a question of Fundamental Right, which the people of the East and the South will be as quick to defend as we are to assert, when they are given to understand the monstrous injustice that threatens these new states. (Applause.)

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If the measure proposed should be forced upon us, I have faith to believe that the people of this country will never rest content until it shall be repealed. For this will be but the entering wedge, as the people will come to learn as they sit before their open fireplaces, reading the country newspaper.

Let us not forget that an essential right lost here, a breach in the Constitution there, is but a gradual undermining of those primary rights of local self-government which have contributed so greatly to our progress as a nation, and which have become so necessary to the welfare and happiness of our children that we cannot afford to lose them if we are to preserve our primacy as a constitutional government. (Applause.)

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Do you realize that under the doctrine asserted by our opponents, these western states (the public lands states) have reached the pitiable condition where if the State of Oregon, for instance, were engaged in the construction of a great highway from its eastern to its western border, as an artery of trade and commerce, and should in such construction encounter a tract of wild, rocky, worthless and unappropriated government land, reaching from its northern to its southern

boundary, it could not, according to the contentions of our opponents, cross that tract of land under its sovereign power of eminent domain, because, as it is said, the government has not given its consent to be sued in condemnation or other proceedings.

We are asserting here no new right, no privilege that we have not enjoyed since the western country was peopled, the exercise of no power that is not clearly contemplated by the Constitution of our country, the use of no right that has not been freely enjoyed by all the people of the United States since the foundation of the government; and let it be understood here and now that this is not a question whether power sites shall be granted in perpetuity or leased for fifty years, or for fifty minutes. (Applause.)

The question is much bigger, broader and more fundamental than this. It goes to the very right of the states to control and legislate in respect to the controlling use of their own property.

It is a denial upon our part of the right of the Federal Congress to transcend the Constitution of the country.

It is an effort upon the part of the people of the West to not only live within but to preserve the sacredness of our Magna Charta. (Applause.)

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The first question involved, briefly stated, is this: Has the Federal Government, or have the states, the constitutional authority to grant, lease, regulate and control for commercial purposes, the waters that flow through the water-power states and which in law and in fact belong, so far as running water is capable of ownership, to the respective states, and to charge and collect tolls for the use of such waters?

The next question involved is this: Shall the water-power states of this Union continue to enjoy the rights which they have freely exercised from the time of the earliest settlements in the West until within the last few years, namely, the necessary rights of way over the public lands of the United States not devoted to governmental purposes, in order that the states may under such terms as they think best for their development, permit their waters to be devoted to beneficial uses, pursuant to the laws of the respective states?

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This means, of course, that we are willing to pay the Government under the states' power of eminent domain, for all rights of way acquired in the development and use of our water power if the Government sees fit to exact compensation therefor.

I recognize that there is a sharp difference of opinion between lawyers representing the Government and those representing the principle embodied in the laws of a number of the western states, providing for the acquisition of such easements by virtue of the states' power of eminent domain; but I shall not stop within the time assigned me, to discuss the correctness or incorrectness of the opposing views, as I

prefer to look at the question in a broader way.

It is enough for me to say that if such easements cannot be acquired by virtue of the laws of the states without the consent of the United States, it is high time Congress passed a law giving the necessary consent. (Applause.)

For I will not count myself among those who may say that a great, free Government like ours will stand in the way of the advancement of the young and progressive states of this Union, unless those states shall consent to its being given the right to tax and control the uses of the water with which we have been so richly and wonderfully endowed. (Applause.)

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As citizens of a great republic, we should not forget that love of and respect for country are and ought to be the paramount traits in our character. If the people shall lose their love or their respect for their government, the government will have lost more than all the kingdoms of the earth. (Applause.) That mutual respect for the rights and prerogatives of the Federal and State Governments which we have so long enjoyed has contributed so greatly to our good fortune as a people that we should, I think, pause long upon the threshold of adventure before we enter as a country upon a system of paternalism which is certain to become not only irksome but irritating to a very large number of the people. (Applause.)

That great tribunal, the Supreme Court of the United States, has, I think, on more than one occasion voiced the real sentiment of the Congress and the country on this subject.

In the case of McGilvra v. Ross, 215 U. S., 70, the Supreme Court, reviewing what it had said in Shively v. Bowlsby, 152 U. S., 1, made use of this significant language:

> The title and rights of riparian or littoral proprietors in the soil below high water mark, therefore, are governed by the laws of the several states, subject to the rights granted to the United States by the Constitution.
>
> It was observed that the United States, while it held the country as a territory having all the powers of national and municipal government, might have granted for appropriate purposes rights and titles below high water mark. But it was said that they had never done so by general laws, but had considered it '*as most in accordance with the interests of the people and the object for which the territories were acquired, of leaving the administration and disposition of the sovereign rights in navigable waters and in the soil under them to the control of the states respectively when organized and admitted into the Union.*'
>
> This policy, it was remarked, as 'to navigable waters and the soil under them, whether within or above the ebb and flow of the tide,' has been constantly acted upon....."
>
> In the latter case (Kansas v. Colorado, 206, U. S., 46–93), it was said, as a deduction from many previous cases, including Schively v. Bowlsby, that "each state has full jurisdiction over lands within its borders, includ-

ing the beds of streams and other waters."

In speaking of the proprietorship of the beds and shores of the Great Lakes, the Court, in the McGilvra case, supra, in quoting from Barney v. Keokuk, 94 U. S., 324, says:

"It properly belongs to the states by their inherent sovereignty, and the United Sta'es has wisely abstained from extending (if it could extend) its surveys and grants beyond the limits of high water."

We have already seen that it had been the custom of the people of the territories and states, long prior to the passage of the Act of 1866, to appropriate, pursuant to custom or local law or both, such easements over the public lands as were necessary to convert the waters in both navigable and non-navigable streams to beneficial uses. The interests of both the states and the Government were greatly advanced under this system. No friction existed, and none ever would have existed had the question been left for state regulation and control, where it properly belongs.

Where there was once an arid waste, we now find fields burdened with grain and orchards bending with fruit. Where there once stood a wilderness of trees, there now stands a panorama of homes. All of this was induced by the wise and beneficent policy of the General Government in leaving to the people of the new states the right to work out for themselves the problems which have made the country what it is.

Will any man deny that the system pursued has redounded to the glory, honor and renown of the Federal Government? Will any man deny that from a monetary standpoint the United States has been greatly advantaged by pursuing this policy?

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No man or company can now develop a waterpower and put it to a public use without the consent of the state. No man or company engaged in the public service business can now exact a rate from the consumer without the consent of the state, acting through a public service commission. Why, then, should this policy be changed?

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Why, then, should these great states be treated as children, even though we should concede, arguendo, that the Government has the power so to treat them?

Have the people not proved their worth by subduing the wilderness and the plain?

Why, I ask, should our country seek to override and humiliate us, who have given it this old Oregon country, as fair a spot as is to be found within all our borders, without the payment of a dollar or the shedding of a drop of blood?

Many, it is true, fell in their courageous efforts, but not in war, as other lands have been conquered. They fell at the stroke of the tomahawk or of diseases brought on by great exposure in their efforts to hold and civilize a then almost unknown land. (Applause.)

Why, then, I ask, in the language of the Supreme Court of the United States, should the policy which has been so long "considered as most in

accordance with the interests of the people," be changed, even if the power to alter this policy does in fact exist? (Applause.)

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It has been frequently held by this great court that the United States possesses the power to acquire property by eminent domain within the limits of the states, even without their consent, when such property is needed to execute the powers conferred by the Constitution upon the General Government. In discussing this subject, the Court, in Kohl v. U. S., 91 U. S.. 367 (quoted with approval in 114 U. S., 531), said:

> "If the right to acquire property for such uses may be made a barren right by the unwillingness of property holders to sell or by the action of a state prohibiting the sale to the Federal Government, the constitutionally granted power may be rendered nugatory and the Government *is dependent for its practical existence upon the will of a state*, or even upon that of a private citizen."

Are not those who advocate the passage of a law placing the control of our waters in the Federal Government urging the adoption of a system of paternalism that will render nugatory the powers we have so long exercised and enjoyed, and which will after all make us "*dependent for our practical existence*" upon the will of Congress?

We have only to look to Alaska to see the effect of paternalism in government, for there a great and wonderful land has been practically paralyzed by its baneful influence. (Applause.)

The citizen must, of course, yield not only to the state's power of eminent domain, but to the exercise of a like power upon the part of the United States. What justice is there, therefore, in adopting a system which would permit the Government to block the development of the states upon lines best suited, in the judgment of the people, to promote their welfare?

What halo is there that surrounds the wild public lands of the United States?

What is there so sacred about these lands, which the people by their settlement have made valuable, that will justify their Government in denying to the states, upon making due compensation upon their power of eminent domain, the right to acquire easements in and over the public domain, that the people may construct ditches, flumes and great highways across such lands and enter upon them for the purpose of putting their waters to beneficial uses?

As the United States freely exercise its right of eminent domain within our borders, shall it ever be said that the Federal Government denied to the people of the states the right to enter upon the public lands in order to promote their happiness and prosperity?

Governments are organized for the happiness and welfare of human society, and when they fail in their purpose, they fail because in their arrogance they are forgetful of the rights and liberties of the people who must defend them in their hour of peril.

Mr. Madison in No. 45 of the *Federalist*, having in previous num-

bers carefully reviewed the powers granted the Federal Government, said:

"The powers delegated by the proposed constitution to the Federal Government are few and defined. Those which are to remain in the state governments are numerous and undefined. The former will be exercised primarily on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several states will extend to all the objects which, in the ordinary course of affairs concern the *lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the state.*"

Mr. Hamilton, discussing the same subject in No. 17 of the *Federalist*, expressed substantially the same views, and declared that any attempt upon the part of the Federal Government to use such powers would be nugatory.

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Regardless, however, of what these wise statesmen said in order to induce the people to adopt the constitution, an attempt is now being made to have the General Government assume control not only of those affairs which incidentally affect the state, but of those which primarily concern the people of the states in their enjoyment of essential rights of local self-government, which have no relation whatever to the execution of any power conferred upon the Federal Government for the benefit of the people of the United States as a whole.

For if the uses to which, and the terms and conditions upon which, the waters of the state shall be applied in our development are not of primary importance to the people of the states in which such water flows, then I am unable to conceive what greater rights respecting our agricultural, mining, milling, industrial and commercial development do in fact belong to the states.

The attempt to regulate and control the states' property is being now made despite what Hamilton, Madison and other distinguished statesmen assured the people as early as 1787 and 1788 would not be done; and while it is now asserted that we need fear no encroachment upon the rights of the states, we shall nevertheless find that the insidious spirit of bureaucracy in government will slowly but surely trespass upon the rights of the state until we shall become little better than mere dependents upon the will of the Federal Government, unless we shall be able to stop at the very threshold this attempted regulation and control of the states' affairs and property. (Applause.)

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Gentlemen, we are making history here today, in this historic state. (Applause.) Therefore let us be sure that we make it right.

We are protesting against a threatened system of Federal bureaucracy under which, with its gradual but constant encroachments, no free people will be able long to live and retain either their self-respect or their self-reliance, which, after all, are the elements in

human character that make states great.

The most striking illustration that I know of concerning the failure of paternalism in government is to be found in the history of the North American continent,—the failure of the French in and their loss of Canada to the English.

About twelve years before our Pilgrims landed at Plymouth the French founded Quebec. But the government was paternalistic in character, instead of being that of pioneers struggling in a new land to overcome the obstacles which nature, for well-known reasons, places in the pathway of heroic men. The French king not only regulated the conduct of the settlers, but he fixed the prices of commodities, fostered and supported the fisheries, the water powers, the mills and all other industries. In short, the government thought and acted for the people, instead of the people thinking and acting for themselves. The result, easily to have been foreseen, was that individual initiative was destroyed, and the self-reliance and energy of the people were paralyzed.

France, in consequence, lost a great empire to the English-speaking people. Is there no lesson here for our serious reflection?

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But what a contrast do we find in the history of our early settlements! Fortunately, our forefathers had no king to either hamper or support them. Into the solitude of the wilderness they looked with grim determination. Theirs was the battle of the survival of the fittest; and it is the spirit with which they were imbued that has made us what we are. (Applause.)

Later, our people fought their way across the Allegheny Mountains to make settlement in the Ohio and Mississippi Valleys; and eventually, as hardy and as heroic a race of men and women as ever peopled any part of the earth's surface, founded here in this great commonwealth a government of their own to prevent the Oregon country from becoming, as Canada had, a part of the British Dominion.

In those days this vast stretch of empire, including the waters which in places hasten with great turbulence to the Pacific Ocean, was thought to be of too little consequence to be worthy of the real protection of the General Government, and so the pioneers fought for and saved that which a few mistaken enthusiasts would now regulate and control for us.

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While the French government in Canada perished because of too much federal usurpation, our little settlements of that now distant day have grown and prospered until our country has become one of the marvels of the age. And from those self-reliant people we have inherited the rights and liberties which we enjoy today with respect to our internal affairs. God grant, therefore, that we do nothing here or elsewhere that will cause our children to surrender, much less lose, those sacred rights. (Applause.)

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As I stand here today addressing you in a state of whose history I

am as proud as are those who live within its borders, there comes to my vision a picture that deeply impressed me. I refer to that great mural painting which is to be found in one of the hallways of the southern wing of the national capitol, and before which I never stood except with uncovered head.

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That picture portrays a scene that is never again to be enacted upon this or any other continent. It gives an ocular demonstration of the struggles and dangers which the pioneers experienced in crossing the continent to found a new empire upon the shores of what we call the Western Sea and in the fertile valleys that lie between the Rocky Mountains and that sea.

The artist, in this great historic picture, presents to our view a line of canvas-covered wagons, slowly and laboriously ascending a pass through the mountains, which is at last to lead the advancing host to the open plain. To one of the wagons are yoked an ox and a mule. You who have pioneered know full well what that means.

Beside, in front of and in the rear of this emigrant train walk a number of the men carrying their long squirrel rifles, watchful of every lurking foe. Near the pass, with her baby in her arms, stands a heroic mother, beside the grave of one of her children, lost in the long and toilsome journey.

I seem to see, as I stand there, the tears glistening in her eyes as she takes sad farewell of that little rocky mound which she perhaps never saw again.

As I see in my imagination that picture, today I ask myself these questions: Has the West lost the spirit, the dauntless courage, the elevated patriotism, that those pioneer men and women left to us when they were called from this their chosen field of action? Have we who follow in their intrepid footsteps become so unworthy, so incompetent, so supine that a bureau of clerks at the national capital shall perchance be invested with authority to tell us what we shall do with and upon what terms we shall use in the development of our states the waters that belong to us? (Applause.)

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I have faith to believe that the day is not far distant when Congress will recognize the justness of our case and relieve us of a condition that has become almost intolerable to a free people. (Applause.)

THE CHAIRMAN: We are favored today with the presence of the Chief Forester of the Bureau of Forestry, in the person of the Honorable Henry F. Graves, and we shall be glad to hear from the gentleman now. (Applause.)

Gentlemen of the Conference, the Honorable Henry F. Graves, Chief Forester of the United States Bureau of Forestry, of the Department of Agriculture, Washington, D. C.

THE NATIONAL FORESTS AND WATER POWER.

Address by Henry S. Graves, Chief of the Bureau of Forestry, Department of Agriculture.

MR. GRAVES: The close relation which the National Forests beat to the water powers still remaining in government ownership naturally explains my appearance in this meeting and on this program. The National Forests occupy the roughest and most precipitous mountain regions of the Western states and their boundaries include, by far, the major part of the water powers, outside of navigable streams, remaining under government control.

Under authority granted by Congress the National Forests have been designated for use for certain large public purposes. As head of the Forest Service during the past five years, I have been charged with the responsibility of protecting these properties from devastation and injury by fire and from depredation and fraud; and charged also with the equally important responsibility of so handling these public resources as to insure their development as well as their protection, and their utilization, as well as their perpetuation.

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The magnitude of the task of protecting the forests from fires, involving the construction of many thousand miles of trails, roads, and telephone lines, and the building of many other improvements, the organization of efficient fire fighting forces, and the education of the public to care in the use of fire in the woods, has emphasized the protective side of forest administration so that frequently the constructive work of the development and use of the resources have been overshadowed in the public mind.

In fact, many persons still think that the work of the Forest Service is confined to fire protection and that the resources are reserved and locked up.

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When the National Forests were first established, the idea of their practical administration by the government was scoffed at by the majority of lumbermen, and the idea of operating timber under government regulation was considered almost an absurdity.

In fact, the men who had made forestry their life work were widely condemned as theorists and impractical visionaries.

The idea that forest fires could be controlled by human means was scouted as an impossibility by men who claimed that being practical was their particular monopoly and special privilege. But fire protection is now accepted by those very

men not only as eminently practical and good business on public property, but the methods used by the government have been widely adopted on private holdings.

The greatest private forest protective associations in the world exist here in the northwest, and they have employed to direct their work men who learned the business of fire protection as officers of the Forest Service.

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Again it was maintained by the lumbermen that it would be impossible to operate in government timber and that the regulations of the Forest Service were impractical and unreasonable.

Nevertheless sales were made, the conditions were found to work in practice, and they resulted in greater returns without loss of profit to the operator; and it is an interesting fact that many private concerns are now using on their own lands methods of the government formerly so freely condemned.

It is now accepted by practical lumbermen that it does pay to take reasonable precautions against future fire danger, to enforce regulations to secure the closest possible utilization of timber, and that from a public standpoint provision for a future timber crop is good business.

Today the government is not only providing timber for local markets, but it is also making large timber sales involving extensive private investments in railroad construction and other improvements. In this state alone nearly 600,000,000 feet of timber has been sold within the last year.

When the National Forests were created their most bitter opponents were the stockmen of the west. The regulations which had been worked out for handling the stock on the public property, though representing the best brains of the Department of Agriculture, were promptly condemned in advance as impractical and destructive to the industry.

But these requirements which were so bitterly denounced in the press and by stockmen were found to work so well in practice upon the range that the carrying capacity of the National Forests has been increased one-third over their capacity under unregulated use, the weight and quality of stock have surpassed that of outside stock, profits have increased and risks diminished, with the result that the very practices which were once condemned have been publicly endorsed by all the important Western stock associations, and the stockmen would be the first to oppose changing them.

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When the work of handling these public properties was first undertaken there were a good many difficulties due to the lack of legal authority to meet the local conditions. The placing of the business of timber sales, of handling live stock and other work, on a healthy and stable basis, has been the result of experience in the development of methods of administration adapted to local requirements, and due also to the fact that Congress has from time to time enacted such additional legislation as experience has shown to be necessary.

Where this has been accomplished

in the handling of resources which touched so vitally great industries like the lumber and stock industries, I am very confident that it can also be accomplished in the handling of the publicly controlled water powers.

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One of the first questions that arose in handling the National Forests was the development of the power sites. And one of the first difficulties encountered was the limitation of authority which prevented the granting of permits giving a satisfactory security of tenure.

In fact, as early as 1907 recommendations were made by the Forest Service for remedial legislation; and in one form or another these recommendations have been reiterated from year to year by the Executive Departments down to the present time.

What has been sought has been first of all to do away with the present revocable feature in the law.

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If it had been possible to insert in the permit now used on the National Forests a clause legally effective, providing for a secure tenure of 50 years, revocable only for violation of the substantial terms of the permit, I have no question that practically all the projects for which there is an opportunity for real development, would have been undertaken and work upon them would now be in progress.

Even under the present unsatisfactory law, development is taking place, as will be shown by Mr. O. C. Merrill in his address.

In 1911, legislation was secured granting authority for 50-year permits for rights of way for transmission lines.

Advantage of this provision has been taken for a very large amount of development, and I judge by the number of permits that we have been issuing that the terms of the permit are found to be entirely practicable and workable.

Remove the revocable feature of the present law as it relates to all power sites on public lands, and the greatest stumbling block to the development of public power sites will be removed.

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I do not know of any public question whose real issues have been more clouded than that of water power development.

It is easy to befog the most simple situation by academic discussion and unnecessary refinements.

This water power question admits of many side issues, any one of which may lead to endless argument and fruitless debate.

In settling this question, it would be possible if we were all agreed upon every point, also to settle the questions of states' rights, state *versus* federal control, water rights and water ownership, single tax, the just basis for distributing unearned increment, and so on.

But the controversies on these points lead so far afield that they very successfully obscure the main problem and prevent any progress whatever in getting remedial legislation.

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The great and fundamental ques-

tion is the continued ownership and control by the public of the power sites it now owns. The fact that the public has already surrendered its ownership of a large number of such sites is no reason why it should give up what still remains in its possession.

The nation owns certain properties valuable for power purposes, properties that are the key to a problem that is of enormous national and interstate importance.

No amount of argument is going to persuade the public to grant the federal control over these power sites to the water power interests. (Applause.)

No amount of argument is going to persuade the public that development and full development cannot take place under federal control. Nor will the public be persuaded that it is not possible to harmonize entirely the state and federal administration to meet every practical contingency.

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A little while ago the men who build street railways were contending that the corporations who furnish the capital for purchasing the rolling stock and steel and laying the track should own the ground upon which the railway tracks rested.

They contended that any other tenure was unfair to the rights of property and would stifle development. Anything more unfavorable than a perpetual grant or a 99-year franchise was unthinkable.

Today no one dreams of allowing private ownership of city streets. The day of the uncontrolled perpetual grant or even the 99-year franchise is past never to return, not only for street railways but also for light and water companies, telephone lines and kindred public service enterprises. Water powers are now passing through a similar period of controversy to a similar conclusion, as I firmly believe.

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A little while ago it was contended that the public had no right to regulate railroads; that a man's property was his own to do with as he liked; that as the railroads were the property of the railroad companies, it was the beginning of anarchy to even suggest that they did not have the right to use them as they pleased, to charge what rates they pleased, to discriminate between patrons as they pleased, to furnish whatever service they pleased and withdraw it when they pleased.

Today no one questions the absolute right of the public to regulate railroads. The water powers are now passing through a similar period of controversy with, I believe, certain prospects of a similar decision.

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I am glad to find that the water power controversy has progressed so far that it is considered advisable, even by many of the most radical, to prelude their remarks by admitting, in principle, the right of the public to own and regulate these properties.

But many follow up that admission by requesting guarantees that would substantially nullify the value of public ownership, and ask that

regulation be so regulated as to render it ineffective. The only public ownership and public regulation that is to be sanctioned must be carefully sterilized and warranted not to affect the pocketbook.

It is easy for the public to give away its property and its rights, but once given away, they can never be recovered except by repurchase on the basis of the full value of the gift.

The public has made up its mind not to repeat mistakes of the past, and in making provision for the use of its power sites, it is going to insist upon a control that really controls. Above all, it will not close the door so that it cannot make provisions to meet future conditions which no one can at this time fully foresee.

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As I see it, the nation owns and controls these power sites and is going to retain that ownership and control. It is not a question whether development can or cannot take place under such ownership and control, for such development is already actually taking place; or whether the government has a constitutional right to control the use of the property it owns. The real question is to devise a plan which, by offering adequate protection to the investor, will better enable the use of the public property for power development under public control, and this is precisely the object which Secretary Lane and Secretary Houston have in mind in the legislation which they have advocated.

If the principles in the Ferris Bill are incorporated in the law, I am entirely confident that the difficulties still remaining in administering the public power sites will be removed, and I base that judgment both on the development now taking place under a defective law and on the assurances of men in the power business.

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I have been very glad to accept Governor Withycombe's invitation to attend this Conference as representative of Secretary Houston, who could not leave Washington at this time, and to have the benefit of the discussions. I have felt that the Forest Service may be able to make some contribution by presenting some facts regarding the development that is now taking place on the public property, and with special reference to the power situation in the West and the whole country. Mr. O. C. Merrill, Chief Engineer of the Forest Service, who is personally known to many of you, will treat of these matters in his address.

THE CHAIRMAN: As has already been suggested by the Chief Forester, we have with us the Honorable O. C. Merrill, Chief Engineer of the Bureau of Forestry, of the Department of Agriculture, Washington, D. C. Mr. Merrill has been assigned the subject of "Power Development on National Forest and Proposed New Legislation." Gentlemen of the Conference, the Hon. O. C. Merrill. (Applause.)

WATER POWER DEVELOPMENT ON THE NATIONAL FORESTS AND PROPOSED NEW LEGISLATION.

Address by O. C. Merrill,

Chief Engineer, United States Department of Agriculture, Forest Service.

MR. MERRILL: This convention has been called for the purpose of discussing ways and means for promoting water-power development in the western states, and particularly for considering the extent and form of federal legislation which would be best adapted to that end.

This question has been much discussed in recent years, and different men and groups of men have reached radically different conclusions, partly because they had different theories of economics and of government, partly because the discussion has been allowed to center around certain academic questions having no essential bearing on a practical constructive program, but largely because there has been a surprising lack of agreement upon the main facts that affect the problem, a lack of agreement that can be due to nothing else than a failure to make that careful and open-minded investigation which ought to precede the discussion of any question of public policy.

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It is obvious that widely varying conclusions can be reached by equally valid argument if the discussions start upon a different assumption of fact. For this reason it is often the practice in the trial of cases at law for the opposing attorneys to agree upon a statement of fact in order that the discussion may be confined entirely to a question of law.

The work of this convention would have far more value could a similar procedure have been followed here. The subject under discussion involves questions of public policy upon which there would be a sufficient diversity of conclusion were there full accord upon the facts. It ought no longer to be necessary to challenge conclusions, the only foundation for which is a misapprehension of fact, particularly when the truth can be learned by anyone who takes the time and has the inclination to discover it.

Eight years of close association with the water power questions of the western states have convinced me that, if we eliminate from consideration those who will cling to preconceived opinions under any circumstances, the most fruitful cause of difference of opinion on a proper public policy toward water-

power development is misunderstanding of the actual conditions that exist.

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The statement is frequently made that while there are 60,000,000 of water horse power in the United States, but 6,000,000 have yet been developed, and that while millions of tons of coal, an expendable resource, are being annually consumed in the production of steam power, 90 per cent of our water power, chiefly in the western states, is running unused to the sea, while all that would be necessary is to bring about the substitution of water power for steam power and to check the appalling waste of coal, is adequate federal legislation.

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Whether there are, in fact, 60,000,000 water horse power in the United States, no man knows. The estimate quoted was made some years ago on admittedly inaccurate data, on an assumption of mechanical efficiency not yet attained, and for a distant future when the cost of coal would make steam power prohibitive.

However this may be, there is no doubt that there are, particularly in the West, large amounts of undeveloped water power. The estimated development of 6,000,000 horse power is correct if the previous rate of increase has been maintained since the last census.

Of this amount about one-third is used directly in manufacturing; the remaining 4,000,000 horse power are used in the generation of electric power. The steam power development of the United States is about 28,000,000 horse power, of which 18,000,000 is used directly in manufacture and 10,000,000 in the generation of electric power.

But it by no means follows that if the public domain and the navigable rivers were thrown wide open to private exploitation that water power would or could entirely displace steam power.

Direct water power could not be substituted for direct steam power in manufacturing because the great manufacturing cities have no water powers. Insofar as substitution takes place it must come through the medium of electric transmission.

Under prevailing practice in hydro-electric systems, the steam installation required for reserve and for peak load service is 50 per cent or more of the water installation.

Hence, if abundant power were available within economical transmission distance from all our markets, and all our industries could be served with electric power, not less than 12,000,000 steam power would be required. But the water power is not so available.

It is absurd to assume that the millions of undeveloped water power in Oregon and Washington can displace other millions of steam power in New York and Pennsylvania, at least until the time when the shadowy dream of a nation-wide transmission network shall have become a practical reality. Nor can much nearer sources be utilized under present-day conditions.

Although possessing hundreds of

thousands of horse power of undeveloped water sources, entirely free from any possibility of federal interference, the states of New York and Pennsylvania have an aggregate steam installation of 7,000,000 horse power, one-fourth of the total in the United States. The water powers of western Pennsylvania and of northern New York cannot, under present conditions, be developed and transmitted to compete with steam power in the coal fields of Pennsylvania or at tide water in the City of New York. The whole matter is one of business economics which no form of legislation short of an outright subsidy can materially alter.

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In order to support the argument against governmental control of water-power sites on the public lands, the statement is made again and again that, although there is urgent need for more power, its development is stagnant in the United States. Volumes of argument have been based on this unproved and unprovable assertion.

It is loudly acclaimed that the eastern states, unhampered in the development of their water powers by the incubus of public land ownership, have far outstripped the western states, and the demand is made that the federal government relinquish its control over the power sites on its lands in order that development may proceed in the west as it has in the east under the stimulus of private ownership, or in any event under the wiser, and, of course, more lenient administration of the several states.

In any comparison of power development in the east and in the west it should not be forgotten that water-power development began in the east more than a hundred years ago and that the aggregate development includes hundreds, if not thousands, of small water powers used directly in manufacturing.

In the west, on the other hand, water powers have been developed chiefly in connection with the electrical industry and practically all the development has taken place within the last 20 years. It would, therefore, be only natural to expect that the longer established, more thickly settled eastern states, engaged so extensively in manufacturing, should have developed their electrical industries and their water-power resources to a greater degree than the western states.

Yet, when we investigate, we find that the actual fact is quite the contrary. In rapidity of development, and in extent of development in proportion to population, the western states have accomplished more in twenty years than the eastern states in a hundred years.

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In the western states—and by "western states" I mean the eleven states west of the Kansas boundary, the group which contains practically all of the remaining public land—the amount of power used in the generation of electricity by public utility corporation, street railway companies and municipalities has increased in the last ten years along by 440 per cent, or more than twice as fast as in the remainder of the United States, or in that

group of eastern states which includes the New England, Middle Atlantic and South Atlantic states.

In proportion to population, the amount of power which is used for these purposes is two and one-half times as much in the western states as it is in the remainder of the United States, and twice as much as it is in the eastern states.

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If we consider the development of water power as distinct from all other power, we find the same situation existing. While the development of water power in the eastern states increased about 90 per cent in the last ten years, it increased five times as fast in the western states, or 450 per cent, more than doubling each five years.

Furthermore, in proportion to population, four and one-half times as much water power is developed and used in the western states as in the remainder of the United States, and nearly three times as much as in the eastern states. These figures are from this year's report of the United States census and are not subject to controversy.

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If we look into the situation in more detail in some of the western states we may learn to what degree and for what reason there is stagnation in power development, if, in fact, there is any foundation whatever for the statement. The power plants of public utility corporations in the State of California have an installation of 1,000,000 horse power. The sum of the maximum loads carried by the individual plants in 1914 was a little over 700,000 horse power. The sum of the simultaneous peaks on the several systems probably did not exceed 600,000 horse power.

That means that the State of California had a reserve in excess of all demands of 400,000 horse power. Of course, a certain amount of reserve for emergency and to anticipate extensions of market is necessary, but if we should allow for even a 50 per cent reserve there would still be left a surplus of 100,000 horse power. It would be surprising indeed if under such circumstances there was any considerable activity in power development at the present time in California.

The State of California needs more users, not more power.

A similar situation exists in Oregon and Washington and other western states.

New plants are not being built in this state because the output of existing plants cannot be sold. Tens of thousands of horse power in the Puget Sound district and in eastern Washington are unused because even at the exceptionally low figure at which the power has been offered, there are no takers.

There is scarcely a power center of consequence in the western states that is not today developed ahead of the available market. Owners of power plants are bending their efforts to dispose of the power they already have, rather than to develop new plants to remain unused.

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Another common statement in the same class as that just discussed is to the effect that whatever development takes place must be on pri-

vately-owned land; that under existing laws no development is being made or can be made on the public land; and that he who would engage in the laudable effort of developing the industries, of promoting the prosperity and of furnishing employment to the citation of his state must carefully avoid all those sites and locations which, even in the smallest degree, are in the ownership and control of the federal government.

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Of the 1,800,000 horse power of developed water power in the western states, 50 per cent is in plants constructed in whole or in part on the national forests and operated under permit from the Department of Agriculture.

In addition, some 200,000 horse power are in process of construction and over a million horse power more are under permit for future construction. If we add the plants which are occupying public land outside of the national forests we should find that considerably more than one-half of the developed water power of the western states is being operated on the public lands under permit from the federal government.

Nor is this merely past history which recent conditions are changing. The Pacific Light and Power Corporation recently completed in California two power plants with an aggregate installation of 94,000 horse power as the initial step in an ultimate development of 250,000 horse power, all of which will be on national forest land and is now under permit. The Great Western Power Company in the same state has permits for development aggregating 300,000 horse power on the Feather River, and is making development as fast as the additional power can be disposed of. The Nevada-California Power Company has four plants in operation on the national forest, will complete the fifth this season, and will begin a sixth next year. The Portland Railway, Light and Power Company is operating a plant on the Oregon forest and has permits for 40,000 horse power more which it proposes to develop as soon as use can be found for the power.

Power sites of nearly 100,000 horse power on the Baker and Skagit Rivers in Washington are under permit to the Puget Sound Traction, Light and Power Company to be developed when the existing surplus is disposed of. And so I might go on indefinitely. The difficulty which the department faces is not to find applicants for power sites, but to check applications to a number which it is reasonable to expect will be sufficient to satisfy all the demands of the near future.

The statement that there is not and cannot be any development under existing conditions has no foundation in fact. Such a statement must either spring from ignorance of the facts or be born of the hope that constant reiteration will finally result in popular acceptance, and that such acceptance will, in turn, lead to public support of a program which could not be carried if the facts were known.

If we disabuse our minds of the idea that under any condition that can reasonably be foreseen water power can, within this generation at least, more than partially displace steam power, and that in such displacement as does take place acts of legislatures and of congresses can supersede economic laws; if we know, as we should know, that these western states are already far better supplied with power than any other section of the country, and that their water power resources have been developed much faster and further than those of any other group of states, until in fact there is now a large surplus of unused power; and if, while admitting that existing laws should be improved, we recognize, what any fair investigation would force us to recognize, that the greater part of the water-power development of the West has been made on the public land under existing law, and that the use of such lands is constantly increasing, limited only by the growth of markets; if we start with these data as our statement of fact, we shall be in a position to discuss intelligently the means by which even greater development may be made in the future, and need not be stampeded, as some would have us stampeded, into a course of action we should be certain to regret.

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In considering matters of legislation it should be recognized at the outset that the public as consumers of power are interested only in securing adequate service at reasonable rates. Toward these two ends all legislation should be directed, and no measure should become law which does not, either directly or indirectly, have these purposes in view. To gain these ends two steps are essential: First, to provide conditions, as far as legislation can provide them, under which power may be developed at reasonable cost, and, second, when so developed to provide the means for obtaining its sale at a reasonable price, that price being reasonable which allows just so much return to capital, and no more, as will insure the maintenance of an adequate supply.

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Of all the elements that enter into the cost of developing a power system, the only one that can be altered by legislation is the cost of capital. To secure cheap capital it is necessary to protect the investment and to provide the conditions under which reasonable returns may be assured.

Certainty of tenure for a period of reasonable length is a prime requisite for cheap capital. The main defect of the present law is its apparent uncertainty of tenure. The fear is expressed that somebody some time may abuse the executive discretion that appears to be granted in the law. Although it is very doubtful if any action not justified on its merits could be sustained before the courts; although in the fourteen years that the law has been in existence no attempt has ever been made to dispossess any occupant of the public lands or to stop the operation of any power plant, but merely to require compliance with the law, or to secure its interpretation by the courts; and

although for many years the federal department have administered the law as though the power to revoke a permit save for just cause did not exist; there is little doubt that rates of interest and of discount are less favorable under the present law than could be secured under a different law.

Not, therefore, because development has not been made or will not be made under a permit, but because of the greater cost of capital, is it advisable to provide a different form of grant.

The revocable permit has no defenders.

The Department of Agriculture has for many years advocated a law which would give it the authority to issue term leases which could be vacated only by judicial action for adequate cause.

It is scarcely to be doubted that such a law could have been secured years ago had not some of those who have declaimed most loudly against a revocable permit been unwilling to accept in its place anything less than an outright grant of the land, preferring, it would seem, that the present law should remain as their strongest argument against any form of public ownership and control of water-power sites.

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As a substitute for the revocable permit any one of three forms of grant might be made: a term lease, a perpetual easement, or a fee simple title.

Except that the easement could be canceled if unused and would revert to the public domain if abandoned, there would be no practical difference between a perpetual easement and a patent. Although the demand that title be given has diminished as the probability of securing it has become less, there are even yet some who advance the ingenuous argument that such a procedure would lead to greater power development and under commission regulation of rates could not possibly harm the consumer.

It is doubtful if the first proposition is true; it is certain that the second is not.

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No development of consequence can be handled on a cash basis. Stocks must be issued and bonds sold. Credit transactions require either business security or property security.

A going concern can give both. A new enterprise, unless it can obtain title to the land or certainty of tenure, can give neither.

Hence the ease with the promotion of a new enterprise. This explains the promoter's desire to obtain title in order that he may have the potential value of the power site as property security for his financial transactions. He wishes the public to supply his credit.

All this might be well enough if every such enterprise was initiated and conducted on a bona fide effort toward development and if the effect which passing of title would have on subsequent rate regulation was not so serious. The history of public land grants forbids the belief that power sites would not be held more often for speculation than for development. This must not be repeated with our water-power sites.

Present development would be blocked except at the expense of buying out the speculator at any price which he might fix.

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But even this is not the most serious result which would follow. The lands thus secured would increase enormously in value, and on this increased value, even under the most stringent of rate regulation, the public would be required to pay interest and profits forever.

One need only to examine the books of power and railroad corporations to see how often by transfer after transfer from the original promoter down to the latest owner value has been piled upon value to the limit that the business will stand. The regulation body can deal only with the present owner, and unless investment and property are to be confiscated must permit earnings not only upon the purchase price but also upon any increase in value that may have taken place since the present owner came into possession.

This is the crux of the whole situation.

It is because of their desire to base rates upon this speculative increase in land values over and above a reasonable return upon the necessary and legitimate investment that certain representatives of water-power interests have so insistently and persistently advocated private ownership of public power sites. Nothing can prevent this except that retention of the sites in public ownership, and no other course should be considered for a moment.

All the protection that capital needs, all the capital that development requires, can be obtained under a proper leasing system. All leases should be for a fixed term, probably not less than 50 years, in order that full opportunity may be given to realize upon the investment. The leases should be renewable to the holder upon expiration except only in the event that the federal government, the state or a municipality should wish to take over the properties for the purpose of ownership and operation, and if so taken over the lessee should be paid back his investment, less depreciation paid out of earnings and sinking funds accruing from earnings.

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The leases should be unalterable for their term, should contain every condition binding upon the lessee, and after investment has been made, should be subject to cancellation only upon failure to comply with the express terms of the lease and by action instituted in appropriate courts, and even then only when the breach is of such a nature that it cannot be remedied by an action to compel specific performance.

No one can honestly say that with such a form of tenure coupled with reasonable conditions of occupancy, there will be any difficulty in securing upon favorable terms all the capital that the necessities of the western states require.

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Much has been said on the question of rental charges for power sites and many strange economic

theories have been advanced concerning the relation between such rental charges and the rates which consumers must pay for their power.

It goes without saying that a rental charge, as well as every other charge of whatever source or nature made upon a public utility is paid by the public in rates, for the simple reason that a public utility, as such, has no other source of revenue.

But it by no means follows that the payment of every rental charge must mean an increase in prices to the consumer. The rates of a public utility corporation are not adjusted to such a hair-trigger nicety. No one would have the temerity to argue that an increase of a few thousand dollars in the taxes paid by the Portland Railways Company would result in an increase in street-railway fares, or that a corresponding reduction would be followed by reduced fares.

It is advisable to charge a minimum rental in all cases to cover administrative costs. Such an amount would be far too small to appear in rates to consumers. With regard to higher rentals than this it should be established as a general principle that no additional rate should be charged which would have the effect either of increasing prices to consumers or of reducing the earnings of the public utility below a thoroughly adequate return.

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Rate and service regulation has an important bearing on the question of securing cheap capital for power development. Regulation is necessary for public protection, but unless intelligently exercised may defeat its own ends.

It is better to err on the side of too great than of too little return, and to readjust rates at definite periods of several years interval rather than by a continuous process, otherwise the only incentive to improved methods and to economy of operation is taken away.

Such matters, however, are without the province of federal legislation or administration. The states have the powers of regulation and most of them are exercising it.

Duplication by the federal government would be both unnecessary and unwise. Only for clearly emergency cases where a state had not provided itself with the means of regulation would I reserve a right of action under a federal lease.

Failure to regulate rates and service today does not prevent the full exercise of the right tomorrow, or have any bearing on future action, but if the essential of ownership is once lost it is lost beyond recovery.

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To my mind there is a clear differentiation between the functions of the federal and the state governments in the matter of power development and use; to the former the maintenance of public ownership and the administration of the use of the land; to the latter the regulation of rates and service and issuance of securities.

But you have been told that there is an irreconcilable conflict between the nation and the states because the former claims to own the land and the latter claim to own the

water, and power cannot be developed without the use of both.

Many a ponderous legal argument has been woven around this question of water rights. The subject may be interesting as a matter for academic discussion, but when all is said and done, nobody knows what the final decision will be, and no one who is chiefly concerned in securing practical results cares.

As far as the national forests are concerned, the Department of Agriculture has solved the matter with mutual satisfaction in the states of California and Oregon, where water written agreement with the state officials all matters affecting power development are handled by cooperative and concurrent action. The department would be glad to take similar action in any other state.

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It is believed that the program of legislation which has been outlined will clear away any real obstacles, if such exist, to power development in the western states. It is believed that such a program is all that capital can reasonably ask, and all that the public interest requires. It is believed that if all those who are engaged in power development will cease contending for the impossible goal of private ownership and are really desirous of arriving at a practical working solution, such solution can be had, and to it the Department of Agriculture will give full support. (Applause.)

THE CHAIRMAN: Gentlemen, the next gentleman upon the program, and we would like the Convention to be in order, in view of the fact that we seem to desire to continue with the program, is Honorable John H. Roemer, ex-Chairman of the Wisconsin Railroad Commission, of Chicago, who will speak to you on "Term of Franchise Proposed in the Ferris Bill."

It gives me great pleasure to introduce to you Honorable John H. Roemer. (Applause.)

DISCUSSION OF TERMS OF A FEDERAL WATER POWER FRANCHISE.

By John H. Roemer of Chicago.
Former Chairman, Wisconsin State Railroad Commission.

Mr. ROEMER: Mr. Chairman and Gentlemen of the Conference: The unusual conditions abroad are causing greater volumes of money to flow into this country than ever before, and, notwithstanding this enormous increase of our capital, the investor is exceedingly cautious and timid.

Unless he is reasonably certain of his security, he will refrain from investing.

As a result, new enterprises can be launched only when the prospects of success are most promising. This condition will doubtless continue until there is a rift in the war clouds and an assurance of the sun of peace again shining upon the depleted nations of the old world. In the meantime, the development of our national resources will proceed with moderate pace and upon conservative lines.

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When the Sixty-fourth Congress comes to consider legislation providing for the development of water power and the use of public lands in relation thereto and for other purposes, the financial conditions confronting the water power owner or developer should be seriously considered.

Theories of ideal legislation must be abandond and some practical measure enacted or hydro-electrical development commensurate with the possibility of the future demand of the public domain states of the west, may prove but a dream of the present generation.

It is idle to legislate upon this important subject merely for the sake of legislating or to satisfy the preconceived idea of some theoretical conservationists. The time has arrived when in justice to the states here represented the government should either undertake the conservation of the water powers of these states, permit the states to undertake it in such manner as they may deem best, or make it possible for private capital to do so upon reasonable terms and conditions. (Applause.)

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During the past decade this matter has been discussed to exhaustion in all its phases. Discussions in both Houses of Congress, before Committees of Congress, in the governors' conferences, in civic conventions of various kinds, on the platform, in magazines and newspapers, fill volumes.

To review or even summarize the various arguments advanced for and against the numerous governmental

policies suggested and provisions proposed in the various bills before Congress at different times, would be a work of supererogation.

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However, in the light of recent events, I deem it important that further consideration be given to some of the fundamental principles of proposed legislation which have been in controversy and are vital to the subject.

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The most important feature of any legislation will be the nature of the permit or franchise that may be granted by the Federal Government to the applicant.

In the Sixty-third Congress it was agreed that a limited franchise for a period of fifty years with the privilege of renewal, unless the government should decide to acquire the property or lease it to another, would satisfy the investors and those interested in water powers.

I have serious doubts whether this provision will bring about the development anticipated or desired.

In most instances it will be necessary to create a market for the power. The market may be varied and unless the industries to be established, which will be dependent upon the power for existence, can be assured a reasonable permanency of the use of the power, capital will hesitate to invest either in the development of the power or in the building of the dependent industries.

If the government or some other person shall acquire title to the property at the end of the fifty-year period of the permit or franchise, it will be essential that not only existing contracts assumed by the developer shall be carried out by the government or other acquirer, but that there shall be a reasonable certainty that the power will not be diverted at the expiration of such contracts to some other use which in the opinion of Congress may serve a more important interest.

Unless it is definitely provided that the use of the power for the purposes for which it was primarily created, if still required for such purposes, will not be diverted except under the greatest public necessity, it will be difficult to establish a market for the power.

Whether the power be used for irrigation, mining, manufacturing or general public utility purposes, the permanency of the use for such purpose, whosoever may control or own the developed power, is essential or little development may be expected under the act.

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From an investment standpoint, an indeterminate permit with an assured term of at least fifty years would be most inviting.

Under public regulation no valid objection can be interposed to an indeterminate permit. The states are today coming more and more to recognize the economic soundness of the principle of an indeterminate franchise in dealing with their public service corporations.

Justice and equity between the owners and the patrons of the property can be worked out better under the provisions of the indeterminate franchise than under the antiquated fixed term franchise.

The nearer the federal franchise

approximates this ideal, the greater will be the opportunity afforded the developer for securing the necessary capital to promote the enterprise and the more certain the public will feel that no injustice will be done either party to the contract.

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In the hearings held by committees of both Houses of the last Congress, it was insisted by the representative of the water-power interests that the terms and conditions under which the permit should issue, should be specifically defined in all detail possible in the Act in order that little discretion in the matter might be left with any Cabinet or other public official charged with the function of granting permits. The policy of such legislation is to deprive such officer of the exercise of all discretion except in minor matters which could not well be fixed by statute, and its rigidity in this particular, because of the variety of circumstances under which developments must be made, is desirable as it places corporations requiring public lands to complete their development more nearly upon the same footing with other corporations whose developments are exclusively on private lands.

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The wisdom of having the franchise or permit issue by operation of law upon compliance with specific statutory requirements, is obvious. Cabinet officers and heads of departments often change with administrations and are always more or less political appointments and concerned with the shaping of the general policy of the administration.

Under the circumstances, it is expedient, if not absolutely essential, that the latitude of the discretion of any such officer, if invested with authority in the premises, be circumscribed by statute. As the personal equation is always an important factor in the application of any measure granting discretionary powers and as it is of vital importance that continuity of policy be maintained which is not likely to result if the authority exercising the power changes with every administration, it would be to the interest of all concerned that an independent tribunal, such as the Interstate Commerce Commission, not subject to the vicissitudes of political parties or factions, be entrusted with such administrative features of the Act as cannot be definitely prescribed by statute.

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Manifestly, such corporations should not be handicapped by special legislation, restrictions or regulations that are not uniformly applicable to all corporations engaged in the same business whether dependent upon any part of the public domain for their existence or not.

Unless Congress will recognize the fact that men of affairs will not engage in any undertaking where they must suffer restrictions and bear burdens to which others engaged in the same business are not subject, it would be better to allow the existing laws, notwithstanding their uncertainty, to remain with perhaps an amendment negativing the power of any public official to

cancel certificates except upon the ground of non-user or mis-user by the holder, and provide for a court review of the act of cancellation by such official. (Applause.)

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Another question in controversy which has been prolific of spirited argument, is the terms on which the Government may acquire the property at the termination of the fixed period of the permit or at any time thereafter.

Strenuous objection has been made to the policy of requiring the Government to pay just compensation to the owners which is guaranteed by the Constitution to the owners of private property when quasi-public or public-quasi corporations exercise the right of eminent domain.

The view that so long as the Government is in control of the most insignificant portion of the land required to complete the development, it is justified in the interest of the public in exacting of the corporation, desiring to make the development, a fixed rental based upon the number of the horse power of the entire development and not upon the actual value of the Government land required, as based upon the use to which it is to be placed, is ethically untenable. Why the public domain, which perhaps should be regarded as held only in trust by the Government for the benefit of the states in which it is situated, should be subjected to a different rule than property of private citizens, has never been explained except upon the ground that "might makes right." (Applause.)

Since the Government itself cannot acquire a particle of property held by private individuals except on the payment of just compensation, it should not demand of others than when any part of its idle domain is required for a public use, a different rule shall apply. (Applause.)

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In the State of Wisconsin the ethical principle adopted by the Legislature is the enactment of its public utilities law is that prescribed in the Constitution of the United States.

Although public service corporations are granted indeterminate franchises, a municipality may not acquire the property of any such corporation except upon the payment of the fair value thereof, exclusive of any enhancement of such value resulting from the franchise.

This provision was incorporated by the National Civic Federation in its model bill which was intended as a guide to state legislatures when legislating upon the subject.

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No one can justly insist that any grant from the public should be permitted in the slightest degree to enhance the value of the property when the public desires to take over the enterprise, yet justice requires that in the event of public proprietorship the Government should pay the fair value of the property as a going concern, less any value that may have resulted from the Government grant.

The Ferris Bill seems to be designed to limit the compensation as nearly as possible to the depreciated value of the physical property or, as characterized by Justice Lurton in the Omaha water case, the "bare bones of the plant."

This in most cases would be far from rendering the owner just compensation.

The advocacy of this doctrine, though never recognized by any court, is having a baneful influence upon the public utility industries of the country. (Applause.) Those who are endeavoring to have this doctrine prevail as a matter of law in the belief that they are rendering a great public service, will, if successful, sooner or later awake to a realization of the fact that men of ability, experience and character, who have developed the public service industries of the country, have made new discoveries and inventions in the arts involved, devised new methods of operation, and, through combination of properties and management, have reduced the cost of the service to the benefit of the public, will be either driven out of or voluntarily abandon the field of such industrial activities, allowing the same to pass into the hands of a mediocre class, to the great detriment of the public.

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Unless the highest order of technical skill and acumen, and organizing, financial and executive ability can be attracted to and retained in the industry, little advancement can be expected. The present stage of the utility arts is due to the men who have devoted their lives and means to their promotion, not as a philanthropy, but in the hope of reaping financial rewards, commensurate with the energy and ability exerted.

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To deal intelligently with the situation confronting those interested in the conservation of the water powers in connection with the public domain, requires the recognition of cold facts and not fanciful theories. (Applause.)

Consequently, when an operating property is to be taken by the Government from those who created it, full and adequate compensation should be given therefor. (Applause.) Such compensation must not only cover the actual cost of the property, but all legitimate expenses incurred and labor performed in transforming the property from a static to a dynamic state.

Any one versed at all in the financial history and the operating experience of most hydro-electric plants, know that the so-called intangible elements of value, commonly grouped under the term "going value," are not mere creatures of imagination but represent the investment of money, the application of labor and the exertion of mental energy that cannot be found in the physical structure nor always recorded entirely in the books of the concern.

The physical structure with little or no business attached, will not automatically become an operating entity with a paying business attached.

It requires time, money and labor to develop the business of any hydro-electric plant. This fact must be recognized in determining compensation when Government proprietorship is to be substituted for private ownership, and unless at the time of the taking it may be clearly shown that all the intangible elements have been fully amortized from past earnings, allowance must be made therefor and included in the fair value of the plant.

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Public service commissions are sometimes disposed to minimize the importance of allowing "going value" or "going cost" when a proper element for consideration in appraising public utility properties.

In all states where this practice is indulged by commissions the inevitable result will be the unfortunate limitation, if not prohibition, of new utility enterprises and hesitation and delay in making the necessary extensions to existing plants to meet the requirements of the public for service.

Utility corporations will not anticipate or assist in the growth or exploitation of new territories when actual values are cut for political or popular considerations to the extent of impairing or casting a doubt upon the adequacy of the security back of maturing obligations or depriving the owners of reasonable remuneration for their labor and service in managing and financing such institutions. Difficulties will arise in such events in the matter of financing of additions to and extensions of plants.

It must be remembered that even state regulation is still in its experimental stage and, because of its illiberal tendency in certain states due to political or other ulterior considerations, it has not inspired that confidence in the investing public which was anticipated at its inception, but which may yet be realized, if sound business judgment is exercised in dealing with capitalizations.

The experience from state regulation of public service corporations acquired during the past eight years should be a monition to Congress in legislating upon a kindred subject.

The public will be benefited only through the promotion of water-power developments and if the public be properly protected from unjust exactions on the part of those engaged in hydro-electric operations a broad policy should be adopted by the government to induce private capital to enter the field.

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The views I have here expressed may be somewhat advanced and beyond the possibility of accomplishment at the present time, but I am convinced that they must be adopted ultimately or slow progress will be made in conserving the water-power resources, which are in whole or in part upon our public domain.

To establish confidence in the wisdom of any legislation upon the subject, liberality in the matter of grants on the part of the government is advisable.

Heretofore, an exceedingly narrow policy has prevailed and as a result little development has taken

place. The investor still controls his purse and unless he can see a fair chance to profit by his investment, he will not assume the hazard of a project which of necessity is more or less speculative.

The belief that any law that Congress may enact will be eagerly accepted by the water-power owners and the investors upon whom they are dependent for the means of developing, is a delusion, and the sooner it is abandoned, the better will be the opportunity for obtaining legislation based upon business principles and business experience. (Applause.)

The Chairman requested the delegates of the respective states to formulate their recommendations for appointment as members of the Committee on Resolutions.

Upon motion, at 5 o'clock P. M. the Conference took a recess until 8 o'clock P. M.

During the recess there were handed to the Secretary by delegates from the respective states their recommendations for appointment on the Committee on Resolutions as follows in the order named:

REED SMOOT, Utah.
JAMES H. HAWLEY, Idaho.
CLYDE C. DAWSON, Colorado.
EDGAR B. PIPER, Oregon.
ERNEST LISTER, Washington.
A. E. CHANDLER, California.
HOWARD S. REED, Arizona.
W. M. KEARNEY, Nevada.
D. V. MOORE, North Dakota.
T. J. WALSH, Montana.
CLARENCE D. CLARK, Wyoming.
GEORGE LYON, JR., Nebraska.

The Secretary submitted this list to the Chairman.

WATER POWER AND ITS RELATION TO NATIONAL DEVELOPMENT.

Address by J. C. Ralston of Spokane, Wash.
Member, American Society of Civil Engineers.

Evening Session, 8 o'clock, Tuesday, September 21, 1915.

Conference called to order at 8 o'clock P. M. by the Chairman.

THE CHAIRMAN: The next gentleman upon the program is John C. Ralston, Engineer, of Spokane, Washington, who will speak to you upon the subject, "Water Power and Its Relation to National Development." (Applause.)

MR. RALSTON: Mr. Chairman, and Ladies and Gentlemen: I have taken upon myself to present to you some non-technical views. Being an engineer, perhaps you might expect this to be handled from a technological standpoint, but I want to assure you that an engineer, along with many others, has the right to indulge in other than technical views.

I desire to engage your attention this evening for twenty minutes on the subject: "Water Power and Its Relation to National Development;" in doing so, I want to give you, categorically, a little bit of history which lays the foundation for that form of constructive legislation for which we plead in behalf of a rational and sane bill regarding the development of water power.

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The jewels of a Spanish queen were the price of America's discovery. When Isabella and Ferdinand financed Columbus, Spain placed in escrow an option on a continental empire. Spanish genius through obscured vision, rapacity, and inefficient government, defaulted on that option, and so passed ultimately into national decay. (Applause.)

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When the United States paid directly in money a price of less than five cents per acre for its five great territorial possessions, exclusive of territory acquired by treaty and annexation, it assumed all the obligations of that lapsed option.

Since then the spirit of the nation has been at work, through a process of social and political evolution, often effectively, sometimes ineffectively, trying to translate its genius into permanent prosperity. In the meantime the development of our national resources has become extensive—some of them are yet to be made intensive.

Development that was only possible under enabling legislation, sooner or later, received the congressional attention which the urgency of the times or the demand of the people had shown to have been a national necessity.

Constructive and sympathetic as have been the genius and statesmanship of the past, it now remains to be seen whether there is still possessed the further genius and statesmanship capable of enfolding that particular, timely, and urgent resources which the present stage of national expansion unmistakably demands must now be made possible of development.

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That particular resource are the latent water powers of the nation.

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Millions of kilo-watts in the west, south and elsewhere are wasting their liquid energy over the cascades of a thousand torrential channels, yet ever ready for conversion into terms of national prosperity.

They are immediately and peculiarly in demand. Notwithstanding this, they are permitted to continue roaring back a mocking echo to the call of industry, only because a fabian theomania, like a raving Lear, has gained ascendency over a retiring and bashful sanity. (Applause.)

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Let us enquire briefly into the theory underlying the use of our national resources, and into the perversion of that theory as we now unfortunately find it.

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When the nation acquired by treaty, annexation and purchase, a territory aggregating, exclusive of Alaska, 1,330,000,000 acres, the most monumental colonization project in history was inaugurated.

Agriculture, manifestly, was its primary destiny; industry and commerce its secondary goal. The genius of the nation thereupon devised novel, effective and sympathetic agrarian policies.

It found ways to foster its commerce, means to protect and encourage its industries, and methods to facilitate the development of its natural resources. Its national ideal became the theory of Encouragement. (Applause.)

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Ninety years ago the State of Indiana began its fight for the utilization, by the citizens of the state, of her natural resources. It and its adjoining sister states were successful. Mr. Benton of Missouri, Henry Clay of Kentucky, and other great statesmen fought for the sovereignty of the respective states and for the just and preeminent theory that the citizens of those states should have the benefit of the natural resources found within the the states. The right to develop, utilize and administer the resources was insisted upon, under the contention that their resources were safer in the hands and under the control of the citizens than they would be if administered or controlled by bureaucratic authority at Washington. (Applause.)

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While success crowned those worthy efforts, yet it soon became apparent that the greater question of national expansion was also to be solved. The statesmen of those

days saw that the immense territory of the west and south could be made into prosperous states, that untold wealth could be created, and that a great and patriotic citizenship would surely follow.

Thus in 1846 the agitation began for the homestead law. The anomaly of that agitation, in the light of the beneficient results that followed, was that that contest lasted for 16 years. It was one of the great political battles of our history, and its results marked the ascendancy of the statesman over the politician. It was a fight for the utilization of natural resources—not for their impalement. (Applause.)

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The homestead law was signed in 1862 by Abraham Lincoln.

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The enactment by congress of the public land laws was the expression of the national genius. Settlement upon the public domain was diligently and liberally encouraged. The creation of every new home and every new industry was esteemed a prime national asset. (Applause.)

Unoccupied land was considered a liability. Homesteads were offered for the asking. Any citizen of any state might secure at the most nominal cost an incontestable title to his land, to have and to hold, in perpetuity for himself and his heirs. The government did not restrict or curtail the patent; no socialistic string was tied around the deed; no indirect or ulterior tax was hidden between the folds. (Applause.)

Neither was it revocable, nor subject to confiscation. The title was absolute to the land, to its fruits, and to the water flowing thereon. There was no indirection—no implication that could cast a cloud upon its negotiable value. There was no bureaucratic inference that his flowing stream, at his own sweet will, might not be hitched to a milk pan or a dynamo. The unappropriated drainage basin of his stream, or any part of it, was never intended to be made the fanciful means of restricting his rights or his ownership.

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And thus was compounded the theory of encouragement of national development.

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The enactment by Congress of the Pacific Railroads Bill made it possible for private capital to consolidate, and, by the building of the Pacific railroads, to subdue a wild forbidding West, and bind together the shores of two oceans with bands of steel. That act was the Argonaut, and the Golden Fleece was in the western sky.

That statesmanship reared a teeming empire from Omaha to Oakland; from St. Paul to Puget Sound, and from Kansas, through the Santa Fe to the Golden Gate.

It gave the nation a hundred metropolitan cities, thousands of bustling towns, and a million prolific farms.

It produced the greatest system of transcontinental railways in the world, and created a combined railroad property value of more than $2,600,000,000, on a subsidy of land

which cost the government something less than $8,000,000.

It evolved a defensive national weapon of colossal proportions, with arterial routes of commerce more fabulous in wealth than the dreams of a thousand Phyriagian kings.

It opened the western forests to the depleted markets of the east; expanded the Pacific fisheries, and, happiest of all, gave permanent employment to millions of men.

Nay, more, the influence of that act reached to the Antipodes and the Orient with their consequent trade and treasure; and it finally gave to the world a new lesson in territorial development—this flower of American genius and statesmanship. (Applause.)

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The theory of that act was the encouragement of national development.

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Another great piece of legislation by a far-seeing congress was the Act of 1866, throwing the public domain open to mineral location. That act enlisted an army of prospectors in the work of national development, and brought to the mints the treasure of the Comstock Lode, whose output alone practically financed a national war debt. The fruits of that legislation were the gold bonanzas of California and Colorado; the silver glory-holes of New Mexico; the copper caves of Arizona and Montana, and the mammoth lead-silver lodes of Idaho.

Every western state poured its virgin treasure into the lap of a liberal and grateful nation.

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Three billion dollars of basic money turned into the channels of trade were the financial measure of the revised laws of '66 and '72.

No single act or combination of acts by the National Congress ever created such a vast, immediate and primal volume of wealth.

Congress never suggested then or thereafter that the miner, individually or collectively, was not entitled to the fruits of his discovery, and to the land appurtenant thereto.

Revocation of title by a government bureau, or by the whole government itself, except for fraud, was then beyond the concept of fair dealing.

A sur-tax upon industry and production was an invention yet to be devised for confounding the forces of national development. (Applause.)

Simple, direct, honorable, even cordial, policies were the philosophy of the law.

Expeditious and inexpensive ways and means were liberally provided by which the prospector or his successor could acquire full and complete title to his discovery.

Today the mining industry knows too well how completely that policy has been perverted. There was no thought then that profit should accrue to the government, but only that a greater wealth could be created for the nation and a greater benefit to the people.

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The theory of that legislation was

the encouragement of the national development.

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Finally, we must hail the Reclamation Act and its co-relatives, the Carey, Desert, Stone and Timber acts, as ones of fundamental genius.

While restrictive details of administration and payments have hampered the fullest measure of success which will finally flow from this act, yet the theory upon which it was formulated was equally as far-seeing as the acts heretofore named.

By these reclamation acts the government fosters, with the co-operation of the interested states, the most advanced and intensified colonization, converting the arid wastes into fields of verdure—literally stopping the hands of time, and in one short cycle of a few years doing by beneficient co-operation that which otherwise would have taken a century to do.

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The policy of reclamation embraces a two-fold purpose.

On the one hand, it converts the useless, arid lands into useful and productive fields, making agricultural commonwealths and industrial centers, quickening the national pulse, and contributing powerfully to national prosperity.

On the other hand, it puts to the highest beneficial use the accessible waters which otherwise would run on forever to eternal waste.

The reclamation acts are the logical sequence to, and the amplification of, the homestead law. They are co-relative, and, operating in series, are expressive of that statesmanship which ever moves forward with the needs of the nation to a full and manifest destiny.

In the political economy of reclamation its significance is the conversion of waste to the highest uses of humanity, through the operation of such sane and practical laws that progress becomes an accomplished fact.

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While we may all be agreed upon the necessity for legislation in behalf of the upbuilding of a national asset, yet constructive statesmanship consists in writing such rational and favoring laws as will actually secure the desired end, otherwise our pearls are dissolved in vinegar.

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Yet there remains another step in this series of land and reclamation acts to round out the fullest measure of completeness which our statesmen must take. Clearly that step consists in making possible, under inviting and practical terms, the development and use of our water powers.

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The theory of the reclamation acts is the encouragement of national development.

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Notwithstanding our complex and diversified civilization, there are but four primal wealth producing industries known to man—agriculture, mining, lumbering, and fishing.

All other activities are secondary or incidental. The four congressional acts just named, within the

range of first principles, profoundly amplify the first three industries as well as all the incidental industries which of necessity follow on the heels of the three primals.

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Thus we see that the statesmanship of the past may well be the guide and inspiration of future legislation. We also see that water power legislation must be substantive and not subjunctive; permissive, not restrictive; that it must be responsive to and sympathetic with the principles of encouragement, not discouragement; that it must be free from the petty entanglements of departmental formulae, legal uncertainties, and short term grants, devoid of socialistic and unfair escheatments, and finally inviting to the financial, industrial, and engineering genius of the land.

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Water power is undoubtedly one of the most closely allied of all the activities incidental to the fullest and most efficient operation of the legislative acts just named. It is merely a platitude to state that there are an infinite variety of avenues contingent upon the conversion of the products of the soil and the earth demanding the use of water power.

It is axiomatic that the more extensively the soil is made to yield, the earth to give up its treasure, or the forest its wealth, the more urgent becomes the demand for power.

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And let it be noted that it was not until this great group of legislative acts made their vitalizing influence felt throughout the land that the nation put away its swaddling clothes and stepped full-panoplied into the arena of world powers; nor until the fruits of such an internal policy were gathering that the country put its monetary system, like other great nations, upon a gold basis.

It was not until the Pacific railroads, fostered and encouraged by the central government, were in their fullest operation that it was possible to inforce the otherwise inert Monroe Doctrine.

Not until our mineral resources were copiously producing was it possible for the nation to remit a Boxer indemnity; nor until our lands and forests were intensively yielding that we could come forth, armed *cap-a-pie*, as a champion of the weak and compel Spanish righteousness in Cuba and Porto Rico.

It was not until a splendid measure of national prosperity prevailed, only attaining its fullest magnitude when national encouragement flourished, that it was possible for an American navy to circumnavigate the earth.

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In other words, history must record the fact that America's greatest political importance up to the end of the nineteenth century was coincident with the internal benefits arising from this series of congressional acts.

Like Greece in the days of her greatest political freedom and national supremacy, it was the days of a government of the people, for the people, by the people.

It was the period of practical prosperity and intellectual advancement. Then it was that the genius of American democracy bore its richest fruit, and justified the theory of the encouragement of national development.

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Thus the doctrine that this nation must be the champion of humanity is ineffective until we ourselves are internally efficient.

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When we reflect upon the fact that the industrial development of the nation promises to be ultimately as great as has been its agricultural development, we are overwhelmed by the immensity of the undertaking.

At no time in our history has our industrial isolation been so keenly emphasized as now.

When peace comes we will find every nation in Europe standing with its back to the wall fighting to regain lost markets and commercial and financial prestige.

When, by reason of that fact, our isolation will be translated into humiliation, stagnation and poverty, we will then realize that we have been living in a fool's paradise. The demand for a return to the practice of national encouragement of industry will sweep aside with a torrent of reaction the philosophy of a new political creed.

We will no longer experiment with Utopian nostrums, but in a very practical sense will recognize that "an acre in Middlesex is worth a principality in Utopia." (Applause.)

It needs no technical definition by the engineer for all to understand that the first fundamental of industrial progress is cheap power.

Cheap power should now, under the peculiar and insistent psychology of the impending times become one of our national ideals.

Cheap power is as necessary to universal industrial growth as cheap land for agricultural growth.

Authorities state that there are about 60,000,000 available water power in the United States. Ninety per cent is undeveloped. This is equivalent to an apportionment of one horse power to every two inhabitants. Already some of the fairly well developed industrial districts, such as the Merrimac Valley, closely approach this ratio.

It is therefore evident that whatever proportion of this potential power is susceptible of commercial development, the time will soon come when it all can be used.

Even then steam will be urgently needed. The production of coal and oil will not be curtailed so much as it will be diverted into other and more economic uses.

If 30,000,000 horse power were to be generated by steam instead of by water, the coal consumption would be 500,000,000 tons per year, substantially equivalent to the annual output of coal in the whole of the United States.

At an average cost of $2.50 per ton at the boiler, the annual loss from burning coal and wasting water would be $1,250,000,000. This is 25 per cent greater than the great-

est annual budget in American history.

If fuel oil were substituted the comparative figures would be about the same.

Is it any wonder, then, that some of the power companies and the owners of the present supply of the sacred carbons are in cordial sympathy with the uneconomic principles of the Fabian conservationists whose theory seems to be the discouragement of national development?

The prospective fields of hydro-electric energy surpass the prophetic vision of the combined engineering talent of the world. A summary of some of the immediate fields in which the uses of electricity have been demonstrated will emphasize the fundamental position of hydro-electric power in our national scheme of progress. Such fields are suggested as:

Farming, including power, light and heat, and its concomitant uses in the manufacture of fertilizers, in pumping, irrigation and farm transportation.

Horticulture, including power, heat, crop acceleration, canning, preserving, by-products, etc.

Sugar industry, flour and cereal milling and the general food industry.

Commercial and industrial chemistry, not alone for power purposes, but for a thousand electro-chemical agencies, and reagents now unapplied in this country because of lack of national stimulus.

Metallurgical industry, mining and its accessory uses; smelting, manufacture and refinement of aluminum, copper, lead, zinc, pig-iron and steel; precious and rare metals; ferro- and other metal-alloys; clays and other raw materials, and for the fabrification of the thousand and one articles of this industry.

National defense, manufacture of potash and other explosive compounds. The polar sterility of this industry is nothing short of sedition.

Municipal and village life, water supply and purification; transportation, state, interstate and transcontinental; and general industry.

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Upon these and many other essentials will be reared the national structure of prosperity and supremacy.

Without them the nation must remain the hermit of sloping brow and protruding chin. (Applause.)

Far-seeing legislation enabling, not disabling, is as necessary for water power development and for the economic place which such power must occupy in the scheme of national aggrandizement as was the legislation which fashioned our homesteads, our land grant schools, colleges and railroads, our mineral productivity, and our irrigation commonwealths.

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The speaker presumes to assert that the theory of strangulation, political self-seeking, experimentation and bureaucracy which has been water-logging the nation must give way to a spirit of foresight, genius and statesmanship.

He takes the liberty of believing that the political shylock who would repudiate an honest bargain, revoke a fair franchise or who claims a knowledge not revealed to the wise men must make room for the man of vision. (Applause.)

The political mole that grubs up and eats for the eleventh time that which he has already eaten ten times over must burrow into obscurity else he will be plowed under for fertilizer. (Applause.)

The conversion of the nation's water powers into the wine of industrial expansion must be no longer restrained by whimsical, stultifying policies. (Applause.)

Transcendent reason must displace transparent illusion. (Applause.)

The privilege of doing business must not, as now, cost seven to twelve per cent of every dollar earned. (Applause.)

Leasing fees, bureau charges, revocable rights, short-term franchises, and one-sided valuations are merely the grubbed-up, specious masks of a sur-tax, innocuous to our constitution and oblivious to our best traditions. (Applause.)

Bureaucracy is the mildew on the heart of democracy, and in the last analysis these impedimenta impose hardships not upon the producer but upon the consumer; and that is a Caracallan triumph—a triumph over nobody. (Applause.)

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Ancient Judea and the laws of the Incas compelled revocation of title to all lands at fixed periods.

In the former the lands escheated to the central power every fifty years; in the latter upon the death of each successive holder.

Instability of land tenure strengthened the ruling dynasty and produced a subservient citizenship.

Thus every semi-centennial in Judea and every mortuary service in the land of the Supreme Inca was a day of feverish, savage expectancy among the political sychophants. (Applause.)

History fails to record that those countries ever left any political influence upon humanity other than that of furnishing an inspiration for the proposed fifty-year franchise term for hydro-electric power plants. (Applause.)

Let us breathe the oxygen of modernity, not the carbon dioxide of antiquity. (Applause.)

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With a recollection of the great legislation of the past and the sweeping benefits thereof; with an unalterable conviction that the nation demands fair dealing, encouragement, sane, rational regulation, congressional control; that state and corporation rights shall be entrenched behind the privileges of the Constitution, unhampered by judicatory bureaus, the speaker pleads with all the earnestness he can command that you, whose influence must have a profound voice in the next Congress, will exert your greatest effort to induce that Congress to enact legislation as encouraging as has been the legislation of its predecessors.

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Let the nation have a law which

will encourage the development of our water power resources.

Let the law be charged with the elements safety and perpetuity of title during good behavior; let it be lifted above the personal equation of individual officials, endowed with legal stability, unfettered by petty restrictions, conceived in statesmanship and born of genius, so that the frugal investing citizen, the custodian of trust funds or the man of greater means may place his moneys with safety in an industry so vital and immediately necessary to national development.

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Let the ears of Congress be turned from the echo-stones of the Capital to the cry of industry, and in the Saturnalia of law-making let a loud voice be heard proclaiming:

"Sanity—
"Sanity—
"Sanity."

(Applause.)

THE CHAIRMAN: Gentlemen of the Convention: There are a number of speakers still remaining, some of whom are not present this evening, and others have suggested that because of indisposition, they would be unable to participate tonight, I would like to ask if there are any of those who follow that would be able to present their speeches at this time?

SENATOR THOMPSON: Mr. Chairman, the Resolution Committee ought to organize tonight. Secretary Chapman advises me that Senator Smoot and Senator Walsh are on the committee, and both of them are on the program. If all of the program has been completed, I move that we now adjourn until tomorrow morning, in order that the committee may organize and be put to work.

SENATOR WALSH, of Montana: Mr. Chairman, I think that the roll of the states should be called, and that we should ascertain at this time who have been selected by the delegates from the different states to represent them on the Resolutions Committee.

THE CHAIRMAN: The states have reported to the Secretary, and the Secretary has the result of that report, and has handed me this list. South Dakota is not represented on the list, owing to the absence of any representative from that state. Also, New Mexico is in the same position. Clarence A. Clark of Wyoming, and also the name of George Lyon, Jr., of Nebraska, has been suggested—the Chair is not clear as to just the position occupied by the gentleman from Nebraska. I understand that he was accorded a seat in this convention. Is it the intention of the convention that Mr. Lyons shall participate not merely in the deliverations on the floor, but on a Committee on Resolutions? what is your pleasure, gentlemen?

SENATOR HART: I move that Mr. Lyon be permitted to take a position on the Committee on Resolutions.

SENATOR WALSH: I am curious, Mr. Chairman, to know why that

question is raised before the House?

THE CHAIRMAN: The Secretary raises the question as to whether Mr. Lyon should be given a position on the Committee on Resolutions.

SENATOR WALSH: Was Mr. Lyon accorded a certificate by the Credentials Committee?

SENATOR HART: Mr. Lyon came here about the noon hour today and had a commission from the governor of the State of Nebraska, appointing him a member of this Conference, and while the State of Nebraska does not appear on the list of states, yet the committee thought that inasmuch as he had been sent by the governor of Nebraska that he should be admitted and have a seat.

THE CHAIRMAN: There will be no objection to Mr. Lyon, the gentleman from Nebraska, taking his place on the Committee of Resolutions. A motion has been made to that effect. Do I hear a second?

SENATOR WALSH: I second the motion.

THE CHAIRMAN: It has been moved and seconded that Mr. Lyon of Nebraska has been given a place on the Resolutions Committee.

The motion was carried unanimously.

THE CHAIRMAN: The committee has reported from the various delegations, and this report has been handed to me as follows:

Senator REED SMOOT, *Utah;* ex-Governor JAMES A. HAWLEY, *Idaho;* CLYDE C. DAWSON, *Colorado;* EDGAR B. PIPER, *Oregon;* Governor ERNEST LISTER, *Washington;* A. E. CHANDLER, *California;* HOWARD S. REED, *Arizona;* W. M. KEARNEY, *Nevada;* C. E. MOORE, *North Dakota;* Senator T. J. WALSH, *Montana;* Senator CLARENCE D. CLARK, *Wyoming;* GEORGE LYON, JR., *Nebraska.*

Upon motion, the Conference took a recess until 9:30 o'clock A. M. Wednesday, September 22, 1915.

Morning Session, 9:30 o'clock, Wednesday, September 22, 1915.

The Conference was called to order by the Chairman at 9:30 o'clock.

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Senator Smoot of Utah, on behalf of the Committee on Resolutions, stated that he was directed by said Committee, as its Chairman, to notify the Conference that all resolutions introduced from the floor of the Conference should be in the hands of the Committee on Resolutions by 4 o'clock this afternoon, in order to give said Committee an opportunity to consider and report upon same. There being no objection, the Chair announced that such would be the rule of the Conference.

ADDRESS BY GEORGE E. CHAMBERLAIN.

United States Senator from Oregon

THE CHAIRMAN: Is Senator Chamberlain present?

SENATOR CHAMBERLAIN: Gentlemen—(Applause.)

THE CHAIRMAN: I see no subject for the speech, senator. Gentlemen of the Convention, we will now hear from Senator Chamberlain of Oregon. (Applause.)

SENATOR CHAMBERLAIN OF OREGON: Mr. Chairman and Gentlemen of the Convention: Some time ago it was my privilege and pleasure to address the Bar Association of Oregon and Washington on the subject of Governmental Control of Water Power and Other Natural Resources. At that time I prepared an address, but my engagements have been such that I have found it impossible to prepare one for the distinguished gathering here today. What I have to say will be entirely extemporaneous and, in the very nature of things, disconnected and desultory.

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If this Conference was called for the purpose of compromising the differences that exist between the federal authorities and the state, or probably it might be better to say between those who believe in federal control and those who believe in state control entirely, it might be instrumental in doing very much good.

I hope in what I may have to say I may not be instrumental in dropping a small wrench into the machinery of the Conference which has seemed to move so smoothly thus far, but I think this is a time when all of us ought to be perfectly frank in the expression of our views. That is true Americanism, and no proper solution of this all-important question can be reached unless we are frank in what we may have to say.

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I am entirely at variance with most of those who have so far addressed this Conference. I want to call your attention to one thing in particular.

Whenever this question has been up before the people, and whenever some other questions of equal importance have been up for discussion, whether in conference or elsewhere, efforts have been made in certain quarters to becloud the real issue by denouncing the government's policy of conservation.

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A very interesting meeting was held at Salem a short time ago to consider the question as to what should be done with the Oregon and California Railroad land grant, in view of the recent decision of the Supreme Court of the United States.

I do not intend to charge that there was any dishonesty in the management of that conference, nor do I intend to charge that there is any dishonesty or dishonest motives in the management of this Conference, but the looker-on at that held in Salem could tell what

it was going to do before it acted, as the looker-on at this Conference can tell what it is going to do before it has acted.

At the Salem meeting the railroad grant and its proper adjustment was very little discussed. The question that received the most attention was the forestry service and the heinous crimes that were being perpetrated against the people of the United States by the so-called Conservation Policy.

When the cloud of dust had blown away the question which suggested itself to the average mind was, "What shall it be—the benignant policy of the railroad grant company, or the nefarious policies of the Forest Bureau of the United States?"

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So I find today, and during the days since this Convention has been in session, nearly all of the distinguished and honorable gentlemen who have discussed this question of water power have simply indulged in criticism of the forestry and conservation policies of the government of the United States, and nobody has yet suggested a constructive policy to be followed by Congress on this important subject.

I hope that the distinguished gentlemen here assembled are not going to be led away from the real questions at issue, by a discussion of the policy of conservation and the general policy of the withdrawal of public lands.

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As evidence of what I say here as to efforts to becloud the issue, I ask this Conference what that map marked in blue (pointing to a map on the wall) has to do with the water power question in Oregon?

It was prepared and used at the conference held in Salem some days ago, and is being used here today for the same purposes which characterized its use at Salem.

It was prepared by a distinguished citizen whose term in the State Senate but recently expired—for what purpose?

Simply to prejudice and to mislead the people and the men who have not given this question the attention which is due to it.

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On the other hand, to the left (again pointing to the wall), is a map, an official one, which gives the lie to the one in blue. There is no question about that. (Applause.)

In other words, the map in blue undertakes to show that at least 50 per cent, or possibly more, of the public lands in Oregon are withdrawn from taxation or from settlement or sale, while the one to the left, prepared by the officials of the Government of the United States, which no one has questioned, shows, upon the face of it that the other is false.

Either it is false, or the one in blue is false. (Applause.)

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I say, without fear of successful contradiction, that the one to the left, the official map, is correct, and the other in blue is intended only to becloud the question which this Conference is to discuss. In other words, practically between one-

fifth and one-fourth of the surface area of the State of Oregon is withdrawn from taxation, as is shown by the official map, and not 50 per cent of it as is shown by the blue or prepared map.

The area withdrawn in Oregon and included within that printed green on the official map has many tracts within it which are subject to homestead entry, if those who want land are physically able to go into the timbered areas and carve out for themselves homes in the wilderness and far from the habitations of men.

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I call your attention to these things because I want you to know that the policy of conservation and forestry, so far as they are concerned, has nothing to do with the question before this Conference, and with the hope that you gentlemen have met for the purpose of discussing the subject impartially, and of suggesting a constructive policy, rather than of indulging criticism and abuse.

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Look at the official government map (again pointing to the map on the wall) and see for yourselves how much is involved in this question here today. The dark red on the map shows the land that is withdrawn for water power purposes. There is only a little red spot in the southwest portion of the state. There are three or four in the northern part of the state on the Deschutes River. There is another red strip in the southeast part showing reservations for water power purposes.

These tracts have something to do with the question at issue, while none of the balance has anything to do with the proposition to be discussed by this Conference, except of course the possible water power sites within the reserves.

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Therefore, I repeat that the purpose of the blue map was to mislead this Conference and in some way to becloud the issue.

Now, I happen to be a member of the Public Lands Committee in the Senate of the United States. I have heard much of this whole subject. I was not able to hear all the evidence because at the time the hearings were being held I happened to be a member of the Commerce Committee which met, usually, at the same time as the Committee on Public Lands, during the long period of these hearings, and therefore there was a conflict in committee meetings.

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Let me call your attention to another significant matter: Do you find on this program, gentlemen—and I am not criticising the motives of the men or of the situation as it is here—do you find any men thereon, except myself, who joined in formulating a favorable report on the Ferris Bill?

Do you find the distinguished chairman of the Public Lands Committee, the Senator from Montana (Mr. Myers), or his colleague Senator Walsh, invited to address this Conference? Do you find the author of the bill to discuss it from his standpoint and from the standpoint of the administration itself

On the other hand, you find my distinguished colleague, the Senator from Utah, who was one who joined in formulating the minority report. It is proper to have him here, but if the managers of this Conference wanted to hear all sides of this question they ought to have invited the men who participated in both reports and who have views upon the subject other than on the one side. (Applause.)

You will find my distinguished friend, the Senator from Washington, Mr. Jones, invited to be present and discuss this matter. He joined in the minority report. Senator Works of California was invited, and he too joined in the minority report presented to the Senate of the United States.

You will find also Mr. Clark, my colleague, of Wyoming, invited to participate in the discussion, and he joined in the minority report.

But where, oh where, my friends, are the men who joined in the majority report, and reported the bill with amendments to the Senate of the United States? Now, that may be all right, but to a man up a tree it looks just a little bit as though it was not intended to hear all sides of this very important question.

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I have great confidence in our distinguished Governor. I know that he wants to do what is right. He is an able man, and he is an honest man; but might he not have influenced the legislators to a different course in naming delegates to this Conference? None but Republicans were appointed.

I have no objection to that, but I do object to appointing only men who thought along the same lines about the Ferris Bill. There ought to have been a division in the Oregon appointees on this question, and there ought to have been given an opportunity to men who had different views on the subject, to express them, in order that these differences might have been threshed out in this Conference.

I have no criticism of the gentlemen who have been appointed; they are all distinguished men, and they are all able men. But they are agreed politically and on the policy that this Conference should pursue.

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And if it is permissible to discuss one's host, on any occasion, the delegates as they arrived were welcomed on arrival here by a bulletin issued by the Portland Chamber of Commerce containing, among other things, the following:

> The question that will confront the conference will be whether water power shall be developed through individual initiative or be placed under the control of the Federal Government.
>
> With 70 per cent of the water power energy of the United States located in Oregon, Washington, Idaho, Montana, Colorado, Utah, California, Nevada, Arizona and New Mexico, and with 62 per cent of the area of those states reserved from settlement and taxation, the water power states are facing a serious problem. There must be settlement of the lands to create markets for the manufacturer. There must be private ownership of the lands to produce the revenues necessary for the building

of roads and for interior development.

Many of the lands which are now available for settlement, as well as many of those which are segregated into private ownership, will require irrigation before they will sustain homes. In most of the far-Western districts where such irrigation is needed the lands do not so lie that they may be irrigated through storage reservoir and gravity systems, but must be supplied with water from great pumping plants. These plants must be operated by cheap power.

Most of the water power areas where water power might be developed are now within the boundaries of forest reserves or Federal withdrawals.

It has been clearly established through a long line of decisions that the states control the water in the streams where water power can be developed.

The Government now sets up the claim that because it owns the land through and over which the streams run, it has the right to declare the terms by which power plants may be constructed and operated.

The Ferris Bill, now before Congress, provides for 50-year leases of the public domain for water power purposes, at the end of which time the property may be appraised and taken over by the Government.

In calling the conference to assemble at Portland, Governor James Withycombe had in mind the fact that Oregon, Washington and California possess 43 per cent of the potential water power of the United States, and that its people are much concerned with the solution of the many problems that will be considered.

The fact that the Ferris Bill provides that one-half the revenues to be derived from leases are to be expended in the development of reclamation projects in the West intensifies the interest which the Northwest has in the subject. It recalls the fact that many millions of dollars derived from the sale of Oregon public lands were diverted from the reclamation of lands in this state, and used in constructing irrigation works in distant states, and then a thoughtful Congress repealed the law which provided that the money should be paid back.

In other words, that distinguished body, instead of laying before the Conference a question to be discussed, analyzed and settled, has put into print and distributed to the delegates upon their arrival in Portland an entirely erroneous statement of fact as well as a wrong statement of what the question was, and has undertaken to advise what determination it was expected this Conference would arrive at. (Laughter.)

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I hope I am mistaken, gentlemen, in my fear that no constructive work is to be done by this Conference, but whatever may be the result I thought I ought to make this statement to you.

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Now, as I have gathered from the hearings of the Public Land Committee and from discussions in private with men who are interested in the development of hydro-electric energy, there are only a few things they would have corrected in the

Ferris Bill, and I am going to call your attention to some of them, very, very briefly.

The first objection they made was that there was a lack of fixity of tenure in the bill as it was originally introduced, and that the proposed term of lease was not loug enough. In order to meet the objections of these gentlemen, the bill, as amended by the Senate Committee, granted a fifty-year lease instead of a shorter time, and permitted the Secretary of the Interior to arrange for a short lease by agreement with the power company or individual who was seeking to develop a water power proposition. I thought that that question was out of the way until today.

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In order that I may not be misunderstood in this matter, I call your attention to a pamphlet prepared some time ago on "Federal Water-Power Legislation," by Mr. Henry J. Pierce, of Washington, who is largely interested in power development, in which he made no question about the term of the lease, nor did he suggest an amendment in that respect, though he did propose other amendments. That was one question therefore that we all thought was out of the way.

Now, what do we find? We find that here it is insisted that titles should be granted in perpetuity, and that the government ought not to lease these sites for purposes of power development.

I think, my friends, that the key note to this situation was struck by Mr. Merrill when he said that no development of consequence can be handled on a cash basis. Stocks must be issued and bonds sold. Credit transactions require either business security or property security. A going concern can give both. A new enterprise, unless it can obtain title to the land or certainty of tenure, can give neither. Hence the ease with which an established business can be extended as compared with the promotion of a new enterprise.

This explains the promoter's desire to obtain title, in order that he may have the potential value of the power site as property security for his financial transactions. He wishes the public to supply his credit. All this might be well enough if every such enterprise was initiated and conducted in a *bona fide* effort toward development, and if the effect which passing of title would have on subsequent site regulation was not so serious.

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The history of public land grants forbids the belief that power sites would not be held more often for speculation than for development. This must not be repeated with our water power sites.

Present development would be blocked except at the expense of buying out the speculator at any price which he might fix. Nothing is suggested here at this Conference except the passing of the title in fee with control by the states. Nothing is suggested except having the government divest itself in the interests of the power company, or the individual that intends to work towards the development of hydro-electric energy.

Another objection was the matter of ascertaining value upon the recapture of the plant at the end of the leasehold. The bill provides for its retaking at the termination of the lease "at the fair value of such property" to be determined by mutual agreement between the Secretary of the Interior and the lessee, or in case of disagreement by the United States District Court. "Provided that such fair value shall not include or be affected by the value of any public lands, rights of way or other property leased or granted under this act by the United States, or by the value of the franchise, good will, value as a going concern, future profits from pending contracts or prospective revenues, profits or dividends."

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Mr. Pierce, in the pamphlet referred to, suggested an amendment to that. He thought that the "value as a going concern" ought to be considered in fixing the value at the retaking, "or any other element which in the opinion of the courts of the United States or in practice duly established thereunder and approved thereby, does not constitute nor represent actual value in said property."

Others have heretofore suggested other amendments along the same line.

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That was a fair subject of discussion between all parties, and its proper solution is extremely difficult even after consulting the decisions of the courts, and personally I see no objection to the proposed amendment.

Other changes were proposed and considered by the Public Lands Committee of the United States Senate. Oh, why cannot some of our friends suggest some method to get around the differences of these contending factions, or interests, on this all-important question?

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One would conclude from the discussions which have been had here that there has been no development of water powers in the West on account of the policies of the government!—none at all! That all power sites are being withheld from the use of the public, to the very great detriment of the people of the West, and yet Mr. Merrill, as the representative of the government, shows you that there is absolutely no foundation for that insistence.

Can anybody refute the statements as to these matters that he has made? If so, why not do so, and endeavor to arrive at the true facts in the case and reach a correct solution of the existing difficulties and differences instead of simply criticising the work of the Forestry Service?

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We all admit that the law, as it stands at present, is unsatisfactory, in that it permits these leases, or permits, to be revoked almost at the will of the Secretary of the Interior.

If what Mr. Merrill has stated here is true, there has been more power development in the West in the past twenty-five years than there has been in the East in the past one hundred years. If he has told what is untrue I do hope that

somebody will correct him during the discussions.

The Secretaries of the Interior may have occasionally made mistakes in the past in revoking permits. They have probably revoked some permits that they ought not to have revoked.

Individual cases may also be shown where he has refused to grant permits which he ought to have granted. In handling all large business of that kind it naturally falls to the lot of an official to commit errors sometimes.

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I have not heard much if anything said as yet as to the proposition which is involved in the Ferris Bill, about the retention by the government of the title to the power sites in order that there may be some future control or rate regulation upon the part of the government. That proposition was discussed before the Public Lands Committee of the Senate, and the only answer to those who insist that the United States should retain title to the power sites in order to have the power to regulate and control rates in the future was and is that it was an interference on the part of the Federal Government with the rights of the State. It is a renewed assertion of the old doctrine of States' Rights.

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I was born in the South, and I never heard a more powerful plea made for states' rights by the most unreconstructed rebel, before or since the war, than was made by my distinguished friend Mr. Piles, from the State of Washington, yesterday. (Applause and laughter.) If he were to go down South and make such a speech as that, he would find himself immediately denounced as a rebel of the worst type. (Laughter and applause.)

Are we going to secede from the Union because of this so-called invasion of states' rights? I hear my Republican friends here discussing the doctrine of states' rights who never mentioned it in the days gone by except in derision. I hear them discussing the doctrine of states' rights as though there were some terrible interference upon the part of the Federal Government with the functions of the states with reference to all these great resources of our Western country. There is no interference in this bill with the doctrine of states' rights. They are simply setting up and attacking a man of straw.

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I will go just as far as any of my friends here today in admitting that the waters in these states in non-navigable streams belong to the people of the states, and, in navigable streams as well, except so far as the Government has the right to control them for the purposes of navigation. But, while we insist that the states own the waters on these sites, we insist that the Government of the United States owns the sites or some of them along these waters coursing through the public domain, and that the use of the one is just as necessary as the use of the other.

Shall the Government, at the behest of special interests, give up

its right to control a situation that may permit oppression simply because the state owns the waters which run along and through the property of the whole people? I say no! I say that I shall stand unalterably opposed to the granting away in fee of these water power sites which will take away from the Government, in the future, the right to control and regulate rates to the public. (Applause.)

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My friends, this is no new question. In the days gone by the legislatures of the states and the councils of the cities and towns were wont to give away valuable franchises in perpetuity. It is hardly necessary for me to refresh the memory of the good people of this city and to remind them that at one time the city authorities gave away the streets to public utility companies, and afterwards, when further franchises and privileges were asked, the people were enabled to recapture those franchises which had been granted in perpetuity. Now, under present conditions, the city has the right to control the rates of these public utility companies and to control its streets in the interest of the people, as a whole.

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The Governor of Washington stated yesterday in an informal address before the Rotary Club of this city that after having sold about 11 per cent of the public school land in the State of Washington, that state had realized about $12,500,000 which was loaned out, bringing in an enormous sum annually to aid the taxpayers in the education of the children of that state, and that the state had still left about 89 per cent of its lands to be disposed of for the benefit of the school children of the state. I congratulate the people of the State of Washington upon this splendid showing. This is an illustration of good management upon the part of the authorities of our sister state.

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On the other hand, the State of Oregon, almost half as large again in area as the State of Washington, has sold, I would say, 90% of its most valuable school land at prices ranging from $1.25 an acre to $2.50 an acre, and has possibly 10% still undisposed of. From these sales it has realized about $6,000,000, and that is practically all that it will realize. This is loaned at 6% for the benefit of the school children of the state, and all of the land that is left in that grant is practically worthless.

I am not charging that the legislation by which this was done was corrupt, but I call your attention to conditions to show that the state's affairs are not always handled for the best interest of the whole people. That land grant ought to have netted from $50,000,000 to $100,000,000, just as my friend the Governor of Washington reports will be the case when the school lands of that state are all disposed of.

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The Federal Government is not going to release control of the power sites within the public domain. I make that prediction, gentlemen.

But if it does do it, and grants the power sites in perpetuity to the state or to corporations or individuals, Oregon, thank God, has provided a way by means of which these and other resources can be controlled by the people and not by special interests. (Applause.)

This state may be the fool of the family, as has been charged, but she has a check against those who would rob the people in favor of the few, and that check is the Initiative and Referendum. And let me say, too, that the people have not abused the power thus retained by them, either. (Applause.)

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Now, my friends, the key to the situation is the regulation and control of the use by retention of the title to the power sites. That is the purpose of the Ferris Bill—use and development with regulation and control.

In the main, it is right. In some respects it might be modified with beneficial results. It is the basis upon which most salutary legislation may be founded. It is not necessary for the government to charge a high if any rate for the use of these power sites. So far as I am concerned, I would be willing to permit the use of the power sites for nothing in order to assist in the development of the West.

It is not, therefore, a question of profit to the government or to the state. It is a question of permitting the use of these sites and retaining the power on the part of the government to regulate and control them now and in the future. That is the reason I insist upon the retention by the government of the title to the power sites, and oppose the granting or the leasing of them in perpetuity.

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Mr. O. C. Merrill, who is and for some time has been Chief Engineer of the United States Department of Agriculture, and who knows whereof he speaks, stated in an address before this Conference yesterday in substance that in support of the argument against governmental control of water power sites on the public lands the statement is made again and again that although there is urgent need for more power its development is stagnant in the Western states. Continuing, he said:

> Volumes of argument have been based on this unproved and unprovable assertion. It is loudly acclaimed that eastern states, unhampered in the development of their water power by the incubus of public land ownership, have far outstripped the western states, and the demand is made that the Federal Government relinquish its control over the power sites on these lands in order that development may proceed in the West as it has in the East under the stimulus of private ownership, or in any event under wiser and, of course, more lenient administration of the several states.

After making this statement he proceeded to show from the records that in proportion to population the western states have accomplished more in twenty years in the way of water power development than the eastern states have accomplished in a hundred years. This statement is directly in the teeth of the con-

tention of those who are insisting upon state control, and if Mr. Merrill has stated what is untrue it ought not to be difficult to refute his argument.

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Not only that, he further shows that even under the law as it stands now, which vests in the Secretary of the Interior almost autocratic power with reference to revocation of permits for power development, there have been many permits issued and great development had. Of the 1,800,000 horse power development in the western states, 50% is in plants constructed in whole or in part on the national forests and operated under revocable permits from the Department of Agriculture.

In addition to this there has been a large development under revocable permits on the public domain outside of the national forest. If this statement is untrue, why cannot it be refuted by those who are insisting that the development of electrical energy is stayed by the policies of the government? The fact is, development has been in advance of the markets, and the difficulty has been not in securing capital for development, but in finding consumers for that already developed.

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I do not want to consume too much of your time, but the arguments here have taken and will take a wide range, and much of it is being based upon the blue map on the wall to which I have heretofore called your attention, showing that more than 50% of the lands of Oregon are within the reserves, and that they ought to be opened up to settlement and saved.

Within the past two months I have been through the eastern, middle and western portions of Oregon to the California line, and I desire to say that a very large percentage of the lands within the reserves are unfitted for settlement and cultivation.

Wherever application is made to enter any of these lands, if an investigation shows that they are better suited to agriculture than to forestry, the homesteader is permitted to enter upon compliance with the laws.

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This is universally true, and it is known to be true by the author of the map in question. Yet he attempts to leave the inference that all of the land within the reserves is withdrawn from settlement and so from taxation. I have sometimes wondered why the distinguished author of the map did not, if he wanted to be entirely fair, prepare another and place alongside of it—why he didn't make one showing the area covered by railroad grants, military wagon road grants and areas owned and controlled by the great timber barons in Oregon, all of which are just as much withdrawn from sale and settlement as are the lands within the federal reserves which belong to the people of the state.

If he had ventured upon the execution of such a work, the area covered would have been almost as great as that held in reserve for the use of the people.

I have called your attention to these things in order that you might get a true conception of the situation, inasmuch as the issue before this Conference has been sought to be beclouded by those who oppose federal control.

As long ago as 1904, and while acting as president of the National Irrigation Congress, I delivered an address at Sacramento, and having in mind the immense body of land within the Oregon and California Railroad grant, I suggested that the people of Oregon and California ought to get together and so amend their constitutions that lands might be assessed in a progressive ratio, as done in New Zealand.

Under such a system the rate of taxation would increase as the holdings of the individual or corporation increased, so that it would be extremely unprofitable for any one to hold large bodies of land for speculative purposes.

Mr. Harriman, in reply to this suggestion, in a public address gave the people to understand that his company did not intend to sell any of this grant, but that it was being held intact for future generations. In other words, he was doing with the lands under the control of his companies what the government of the United States was doing. The course of the government, it seems, is subject to criticism, but not the course of individuals and corporations who allege that they have in view the same philanthropic purposes as the government.

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The distinguished gentleman from Washington, ex-Senator Piles, criticizing the policies of the government, called attention to the paralysis that followed in Alaska because of conservation. I do not see that it had anything to do with the question that this Conference has met to consider, but it was made, nevertheless.

I do not altogether challenge the correctness of this statement, but let me remind you that paralysis had to be brought on in Alaska in order that the hand of the despoiler might be stayed and something accomplished in Alaska for the people.

When this so-called policy of paralysis was adopted with regard to Alaska, it was done to save it from that philanthropic combination known as the Morgan-Guggenheim Syndicate, which had its tentacles out in order to get control there.

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There is no question about that, nor is there any question but that their efforts would have succeeded but for the prompt policy which the government adopted of staying the hand of greed in the interest of the people. This syndicate had built a railroad a short distance into the interior of Alaska; it had secured valuable copper interests; it was endeavoring to secure the coal lands; it was reaching out to get possession of the gateways to Alaska; it controlled the transportation systems of the territory, both inland and offshore; and but for the adoption of a policy that temporarily at least paralyzed Alaska, Alaska would eventually have been permanently paralyzed by the hand

of monopoly and individual and corporate greed.

All hail, then, to a policy which has retained for generations yet unborn the mineral storehouse of America and of the world! The lands held in reserve in Alaska are now being released. The time is not far distant when agricultural and mineral development will be hastened. The government itself is opening up the territory by the construction of a railroad into the interior. How much better that such development should follow than that all of these resources should be monopolized by individuals and corporations.

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Now, gentlemen of the Conference, this is all I care to say. I have probably said too much.

I have not meant to say anything offensive, but I felt it my duty to be frank about these great questions.

What this Conference ought to do is to endeavor primarily to formulate some constructive policy. A simple resolution of criticism and denunciation will do no good. That some legislation is necessary is conceded on all sides.

Let this Conference offer something to the Congress of the United States that will be helpful and then I am sure that there is not a man in Congress who will not lend such suggestions an attentive ear, and whose purpose it will be to do his whole duty toward the people of the West.

I pledge you my support to any proposition that looks to the development of the resources of these western states in the interest of the people, except that I shall not at any time consent to give up to any individual or to any corporation the power sites in perpetuity so as to enable that individual or that corporation to charge any consumer more than a reasonable rate for the service rendered. (Applause.)

ADDRESS BY THOMAS J. WALSH

United States Senator from Montana

GOVERNOR SPRY: The next, gentlemen, upon the program this morning is an address by Senator Thomas J. Walsh, United States Senator from Montana. (Applause.)

Gentlemen, it gives me pleasure to introduce to you Hon. Thomas J. Walsh. (Applause.)

SENATOR THOMAS J. WALSH OF MONTANA: Mr. Chairman, Gentlemen of the Conference: My acknowledgements are due to you gentlemen, and particularly to my friend Governor Withycombe, of the State of Oregon, whom I have known for many years, for the invitation extended at this late date to address you, for, as you will observe, I am not on the program to speak at this meeting. Nor did I expect to indulge in any formal address to you at this time. You are to be commiserated greatly that I should be obliged to talk away in a rather rambling sort of manner about this question that is of such supreme importance to the people of my state in common with the states of the West, as well as to the whole country.

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I may say, in this connection, by way of explanation, that although the states of Oregon and Washington are bountifully blessed with natural power sites, these two states having power possibilities reaching almost to one-third of all there are in the United States, the State of Montana is not very much or very far behind either of them, but it stands first among the states of the nation in developed water power per capita, and it, perhaps, leads all the nations of the earth in that respect.

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Development of water power in our state has progressed with unusual celerity, practically all of the great sites held in private ownership now being occupied. The remainder of the large sites are upon the public domain.

Further development is practically arrested until some legislation is enacted. Now, having this very great interest in the matter, the Governor of our state sent us over here to contribute as we might by way of suggestion and discussion towards finding some ground upon which the contending interests might unite, looking to legislation which would enable the development to go forward.

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I was considerably astonished when I came to this city to be handed a pamphlet purporting to be the official organ of the Portland Chamber of Commerce, our hosts here, in which the assembled delegates and those interested in the

question were advised that the question that will confront the Conference will be "whether water power shall be developed through individual initiative or shall be placed under the control of the Federal Government."

I wondered if that was the idea of the people of the City of Portland touching the nature of the question for consideration before this convention. I was very much relieved, however, when the presiding officer at the interesting luncheon we attended yesterday very much more accurately stated the proposition than did the Chamber of Commerce, for he said the question was, "How to get the use of the Government's land in order to use the State's water." (Applause.)

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I want to add some comment before I enter on the consideration of this matter at length, to say another word on the subject referred to by my distinguished friend—and I am very proud indeed to call him such—the senior senator from the State of Oregon.

In this pamphlet, which was thus handed the delegates to the convention, appears a heading, "Sixty-two per cent of Western States TIED UP."

Now what does that expression convey to the ordinary mind? It was intended to convey the impression that sixty-two per cent of the area of these states is held in reservations of one kind or another. My own state is said thus to be "tied up" to the extent of forty-nine per cent, while fifty-one per cent is held in private ownership.

We are kindly furnished statistics which constitute the basis of this chart, from which it appears that there were included in that forty-nine per cent twenty-two million acres in Montana of a total of ninety-nine million acres, that are open to appropriation by any qualified person who comes along to take it. You cannot complain about that. People are taking those lands as fast as can be expected. One-third of all the homestead entries in the United States last year were of Montana lands, and these twenty-two million acres will very shortly cease to be public lands. The expression "tied up" is wholly inappropriate as applied to that area.

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Then, we have a number of Indian reservations in our state. What would you have us do? Would you like to turn the Indians out in the cold and permit the lands set apart for them to pass into private ownership?

When you come to the matter of how much land is "tied up," you encounter the plaint that there is more land in the Forest Reserves than there ought to be.

There may be here some just cause for complaint. What does the grievance amount to?

The total amount of land in forest reserves in our state is sixteen million acres out of ninety-six million acres. The main range of the Rocky Mountains, embracing just such rocky and barren lands as Senator Chamberlain referred to, traverses our state from north to

south. Included in the total that is "tied up" is the Glacier National Park. The magnificent Switzerland of America and the grandest scenery, I undertake to say, that God has placed on this earth for the delectation of his children, is seen there. Would you like to throw that open?

The idea to be conveyed to you by this is that that much land in the Western States is not subject to taxation. Of course, the land still open and unappropriated is not subject to taxation. You cannot tax the Indian reservations. The forest reserves are there and you cannot tax them.

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Some most unreasoning prejudice has prevailed against the inclusion of the public forested lands in reserves.

Would you like to see them left the prey of great conflagrations that may escape control and spread devastation over the country?

Have you a state forester here to safeguard the forests on your state lands? You have no forests here belonging to the state. You have sold them all.

In the State of Washington haven't they a state forester to take care of their lands and see that the timber on them is not destroyed by fire? I own forest land in the State of Montana, and I pay yearly to preserve the timber it bears. Shall the Government pursue any other policy?

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But all the charts really signify is that lands in the various Western States to the amount indicated are not subject to taxation.

I have a great deal of sympathy with the concern of my distinguished friend, the Chairman of this meeting, who presides with such judicial fairness over the deliberations of this body—I have a great deal of sympathy with his concern about the limitations under which our states labor in the matter of revenue. That there is much land in these states that is not subject to taxation is indisputable.

But look at the area withdrawn as power sites. Senator Chamberlain told you how much there is under withdrawal in the State of Oregon. Observe this map here (indicating map on the wall.). The very deep black is the land in each of the states that is withdrawn as power sites. This indicates that the opportunity of the state to exercise its right to tax, so far as the lands before us for consideration are concerned, is restricted to the extent of that little black area on that map, quite out of proportion to the furore it has occasioned as a limitation on the power to tax.

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But whatever may be the extent of these power sites, their immunity from taxation need not trouble anybody. My esteemed friend, Governor Spry, entertains the belief that if a leasing system, such as has been suggested with reference to these power sites, is put into execution, there will be no taxes derived from the lands to which it is applied.

Some other gentlemen around upon the outside—not members of this convention, but not without influ-

ence upon it, whose views pervade the air we breathe, weighting it like the leaden-hued atmosphere that overhung the house of Usher—industriously inculcate the same idea.

Let me say to my esteemed friend, the Governor of Utah, that there would not be the slightest difficulty about deriving revenue out of these lands should they be leased instead of being sold.

Public land of the United States is not taxable, of course, but whenever the government grants to any person the right to occupy public land, that right immediately becomes subject to taxation.

A man who owns a piece of private property gives me a lease on it for fifty years. That leasehold is something which I enjoy subject to taxation by the states, and so, my friends, when the Government of the United States leases a power site to anybody for a period of fifty years, that right of occupation is subject to taxation and every dollar's worth of improvements that is put upon it is equally subject to taxation by the state.

It has been repeatedly so decided by the Supreme Court of the United States. It was so held in Forbes v. Gracey, 94 U. S., 762, and again in the case of Elder v. Wood, 208 U. S., 226. If there is any one who cares to question that statement I have an extract from the opinion which I shall be glad to read to you.

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Not only has it been determined by the Supreme Court of the United States that a state can tax possessory rights on the public domain, but we are actually doing it in the State of Montana. The question has also been decided in the same way in the State of Nevada. There they taxed mining locations.

The land is not subject to taxation, but the right of the locator to the claim is subject to taxation, a right which in the case of the Comstock lode was worth millions. They taxed the right to occupy and mine the land embraced in that famous claim and the right so asserted by the State of Nevada was sustained by the Supreme Court of the United States.

So that if the parties who acquire a lease of a water power site refuse this ranch or neglect to pay their taxes it can be sold just as it can be seized on execution and sold, to satisfy the debts of the holder.

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I told you about Montana. The exceptional development of water power in the State of Montana has been brought about by the activities of the Montana Power Company and corporations which have become merged in it.

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Mr. Ryan, the president of that company, was a witness before the Senate Public Lands Committee holding hearings on the Ferris Bill. I trust that you will pardon me if I read to you a few lines from his testimony to dispel any idea that may have found lodgment in your minds that to lease water power sites will impoverish the states by depriving them of the taxing power as to such properties:

Senator Norris. Now, were you

going to talk about the charge, Mr. Ryan?

Mr. Ryan. The charge?

Senator Norris. This bill provides, you know, that there shall be a charge made. What is your idea about that?

Mr. Ryan. Well, I think it will cost the Government something to administer this business. It ought to be a minimum charge, because there is not any question that I won't pay it. It won't come out of my pocket; I will pass it along to my customers. I do not think that is the object of this bill—to put an additional burden on the consumer.

Senator Norris. One of the objections made by the governor of Colorado, and the objection made by a great many other people to the leasing system generally is that this property is held out of taxation for state purposes.

Mr. Ryan. Yes.

Senator Norris. Of course you would pay no taxes—

Mr. Ryan (interposing). It is held out now.

Senator Norris. Yes, it is held out now and would be held out unless there was an absolute title given to you, so that there would not be any taxes paid on it.

Mr. Ryan. As a matter of fact, I think that is largely in the imagination of the governor of Colorado, if you will permit me to say so. I think our companies would have to pay taxes, just as much, whether they built their power plants on public lands or not.

Senator Norris. Their improvements would be taxed?

Mr. Ryan. Their improvements will be taxed and they will pay about so much.

Senator Norris. Now, you have had a good deal of experience in Montana, and, as getting some light on that subject, I would like to have you give us any information you have in regard to the taxes you have to pay in Montana on similar properties.

Mr. Ryan. In the period of development, our taxes are very reasonable. When our plants are developed and are ready to supply the market, we are taxed in Montana, on the approximate value of the property.

Senator Norris. Taking a case where you had a dam site now and owned the title—I want to compare the two cases, one on Government land, where you have a lease, and another one on private land where you own the fee simple. Can you give us any information as to what the difference in taxes would be in those two cases?

Mr. Ryan. I do not think so. My judgment about it is that there is not any difference; that the power company would be taxed as much in the one case as in the other.

Senator Norris. There certainly would be a little difference in the value there, I should think.

Mr. Ryan. There might be a little difference. But, in other words, we are taxed so much on the right of way now on the Government land under this grant we obtained from the Department of the Interior some years ago. I have no doubt we are paying just as much tax on that and we would pay just as much if it were a lease as if we owned the fee absolutely.

Senator Norris. Now, that is interesting taken in connection with the objection made by the two governors yesterday.

Mr. Ryan. I do not think that

is a substantial objection. That is my feeling about it.

Senator Norris. You think, as far as taxation is concerned, that practically there is no difference?

Mr. Ryan. I do not believe there is.

There is no reason why we should hesitate to adopt this system if it shall otherwise be deemed wise, because of the very proper dread of losing the taxes that would under another be imposed on this land.

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I came here and have ventured to impose on you in this way in the hope that I may be of some assistance in clarifying the questions that are before this body for consideration.

It is easy, you know, to indulge in denunciation and unreflecting criticism. It is easy enough to say, "We will rot here before we will submit to these impositions." That is cheap.

The question is, desiring the immediate opening of these valuable lands as we do, what kind of legislation shall we ask for, having in mind that it must be acquiesced in by a majority of the representatives of the whole nation in both houses of Congress.

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Why, my friends, our esteemed friend from Colorado, Mr. Dawson, does not want any legislation. His idea is that the present law is good enough for us. He insists that all we need in this matter is a proper construction of the present law from the executive and administrative officers of the Government—from the Secretary of the Interior and his subordinates. He does not want any new legislation at all.

Well, of course, if that is the case, if that view prevails, we will just adjourn and go home. It is idle to debate the matter here at all, because do you imagine that the Secretary of the Interior, charged under the law and by his oath of office to administer the law as he understands it—do you think he will be influenced in his judgment as to the proper construction of the present law by a resolution handed him by this body? Do you think that the Supreme Court of the United States will be influenced in the construction of the law by any conclusions that may be arrived at by this Conference?

You would not have the Secretary of the Interior conform his judgment as to what the law is by any opinion expressed here. You would despise him and scorn him if he did do it. You would have no use or respect for the Supreme Court if it were influenced by your resolutions.

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The distinguished delegate from Colorado does not want any legislation at all. He does not ask any change in the Act of 1901.

The acts passed since the subject first engated the attention of Congress in 1866 are all right so far as he is concerned, and all sufficient.

According to his contention all you have to do is to go out, find a power site upon a public domain, sieze it, and say to the Government of the United States, "I am entitled to occupy this land by reason of the right of eminent domain in-

herent in the state and reposed in me by it."

That is a very simple solution of what has heretofore been regarded as a very vexed question. Let me remark, however, that the question is a very interesting one as to whether a state, without any legislation by the Congress of the United States, can exercise the right of eminent domain upon the lands belonging to the Government of the United States.

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I recall very well that when in college, I wrote my graduation thesis upon the Ordinances of 1787, and, following the course of the decisions upon that historic statute, I ran across a decision by Judge McLean, asserting that a state has the authority so to appropriate public lands, but since the time the government was formed in 1789 down to this day, no Congress has ever passed a law by which a state could assert such a right, by calling the nation into court.

I repeat no Congress has ever passed a law by which the state could exercise that right. At least some of the wisest men of the past felt it was not a very good thing to give the states the opportunity even though they of right should enjoy the power to exercise it.

From this unbroken course it may well be doubted whether the state, under the constitution, has any such right and even if it has shall we allow the power sites to remain tied up until we can prevail upon Congress to reverse the policy of a century and a quarter?

It is the common belief that we need some legislation in order to invite capital to invest in these wonderful resources with which the munificent Providence has blessed this glorious country. Most of us conceived that this Congress was called to propose some plan or make some suggestions concerning such legislation?

By the law of 1901, it is provided that the permit which it authorizes the Secretary to grant is revocable by him at his pleasure. It is now proposed to enact something new.

When you come to draft the new legislation, you are confronted, in the first place, with the question as to whether or not these power sites should be granted away in perpetuity, alienated in fee, to pass from the Government for all time just the same as our agricultural lands, or whether it is better to adopt the plan with reference to these public utilities that is in vogue with reference to every public utility, the street car company, the electric light and power company, the gas company or a water company.

In the case of all other public utilities, those operating them are given the privilege to occupy land under municipal control for a limited period of time, and then, when the period expires, if the municipality sees fit, it has a right to re-let the privilege or franchise at its discretion. So that, the first question for you to talk about, in my humble opinion is, should these power sites be granted away in perpetuity, alienated in fee, or should leases or permits be granted to

occupy these lands or power sites for a limited period of time, say for fifty years?

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Now, you are confronted, in the first place, with the suggestion that the United States Government has no constitutional power to lease its lands for a limited period of time. Of course, there was a time in our history when that argument might have been made with some degree of confidence.

So great a statesman as Thomas H. Benton, whose vision of the possibilities of the great West was broader and grander than any other statesman of his time, took that view. He went before the Supreme Court of the United States and advocated it there as he did in the Senate of the United States, with all the great powers of his giant intellect, using just exactly the same arguments as you have heard here today.

It was no reflection upon the ability with which the subject has been discussed before you to say that he anticipated every line of reasoning advanced before you.

But the Supreme Court said: "You are wrong about that." It made that answer to Benton in the case of United States v. Gratiot, 14 Pet., 526, decided eighty years ago. The court reached the same decision in the case of Light v. United States, 220 U. S., 523, decided only a few years ago.

Now what is the use of further discussion of the subject? I am a lawyer; I have a notion that when these great constitutional questions are once decided by the Supreme Court of the United States the American people are disposed to regard them as settled and there is not much use talking about them before a mixed audience as debatable questions. (Applause.)

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Let us suppose then that it be granted that the Government of the United States has the right to lease these lands for fifty years, if, in the wisdom of Congress, it is deemed the most practical thing to do. The question then is one of policy. "Is it a wise thing to do this?"

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I give you my own personal view about the matter. I believe that it was a grievous crime ever to have adopted the policy of granting public service corporations and public utility organizations perpetual right to occupy, for instance, the streets of a city, or any other property of that character. (Applause.)

The common conviction of the people of this country is that way. I am with Senator Chamberlain. I am against granting away in fee, in perpetuity, to any water power company these power sites.

I am willing that companies caring to develop them may hold these power sites for fifty years from now, but the future generations, those that come after us, our children and our children's children, should have the right to dispose of these water power sites under the conditions that may then exist, and as may seem best to them. (Applause.)

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Suppose you differ with me about that. Let us look at the situation that confronts us.

You know that sentiment has taken possession of the public mind in the eastern part of this country. You complain of those people there because they do not agree with you upon this proposition.

Those people in the eastern part of the country would be disposed to yield their views on many of these questions in obedience to a unanimous demand going up from the West.

Whenever any of this public land legislation is before Congress many of the gentlemen upon our side of the chamber will come either to Senator Chamberlain or myself and say, "Chamberlain or Walsh," as the case may be, "how is this legislation? Is it right?" Should either of us say, "No, that is not a wise or a just law," the chances are that in the absence of a division of opinion among those in whose judgment they thus repose confidence, the inquirers will not vote for it.

They appeal in the same way for guidance to Senator Smoot or Senator Clark upon the other side of the Senate. I have no doubt his associates went to Senator Piles of the Washington delegation and asked him for his opinion on public land legislation, during his service. The eastern representatives might be disposed to yield to our judgment in this matter if it were all one way, but in view of the want of concert among those directly interested, what reason is there to believe that they will yield their convictions to meet yours?

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There are twelve states represented here in this body of those west of the Missouri River. The State of South Dakota is not represented. The State of Kansas is not represented. The State of Oklahoma is not represented. New Mexico has no delegates in this convention.

I stand committed by what I have said before you to the principle of a lease for a limited period of time as against conveyances in perpetuity. My colleague, Senator Myers, is chairman of the Public Lands Committee that reported favorably the Ferris Bill embodying that idea. Montana is a unit in both houses for the policy it declares.

You heard read the telegram yesterday from Senator Pittman of Nevada. He will raise up his voice in harmony with ours and will be supported by Senator Newlands, his colleague.

Senator Chamberlain will say, "In the name of the people of the State of Oregon, I protest against the conveyance of these power sites in perpetuity." What his colleague will say we are still uninformed.

The Senator from South Dakota upon the Republican side of the chamber, Senator Sterling, joined in the majority report on the Ferris Bill. His colleague, a Democrat, stands with him on the proposition.

Senator Norris, a Republican member from the State of Nebraska, signed the majority report and was one of the leading advocates before the committee. His colleague, Senator Hitchcock, is with him on the essentials of that bill.

Senator Ashurst of the State of

Arizona is in favor of the same policy.

Now, with this pronounced expression from the West, coming from both sides of the chamber, from Republicans as well as Democrats, what can you expect those from other sections of the country who naturally incline to the policy of retaining title to these lands in the general government to do?

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Let me say that in this community, where, as I suppose, partisanship often runs as it does in every community, some effort is being made, it is obvious, to foment antagonism to the only bill that has had favorable consideration, upon the suggestion that it is an administration measure. To assure partisan opposition I am said to be the representative of the administration forces.

Why, you know that the sentiment against allowing the title to these power sites to pass from the nation was so strong in the Republican ranks that that party, when it was in power, practically gave up in despair the effort to legislate on the subject.

Do you believe that the Republican party, if it were restored to power, would grant us these power sites in perpetuity? This is no political issue. The effort to make it such does no credit to those who attempt to arrest the development of our water powers by making it such.

But when the voices of senators from both sides coming from the West are raised up against any effort to enact legislation that permits the title to these lands to pass irrevocably from the government, what chance, think you, is there of getting it passed? How much influence will the resolution of this Congress, directly or indirectly countenancing any such policy, have upon the Senate of the United States?

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In speaking on this subject I refer to sentiment in the Senate, because that is where the West is relatively mose powerful. When it comes to the House of Representatives three-quarters of the members—I speak generally—come from east of the Missouri River. I wonder what chance there is of getting through the House a measure of that kind?

The Representatives as a body belong to a class of people who, for one reason or another, do not care particularly whether there is any legislation upon this subject at all. I warn you, however, against the insidious influence of another class of people, not so negative, who will rejoice in seeing nothing done towards alleviating the water power situation.

In nearly every community there are people who have a monopoly, more or less complete, of the supply of hydro-electric energy. It is altogether reasonable and quite to be expected that they would interfere with the business the fruits of which they are enjoying.

It is perhaps not difficult to understand why people so situated declaim vehemently in favor of state's rights or some other equally impossible theory, the advancement of which is calculated to con-

fuse our councils and postpone the day when the people may have relief from their exactions. If I belonged to that class I might possibly be standing for some such doctrine myself.

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Suppose then, we conclude that the legislation should provide for the grant of these power sites for a limited period. The next question is how compensation is to be made to the Government, by direct payment of a lump sum, by an annual rental, or by a royalty based on the power generated and used?

The Ferris Bill prescribes the last mentioned plan.

I call your attention again to the statement of the proposition made in the Chamber of Commerce pamphlet, to the effect that the question before the Congress is whether the power sites should be developed by individual initiative or under federal control. I want to canvass briefly with you this logic of federal control. Here it is said is where the federal control comes in, because this bill provides that the sum to be returned for the use of the land constituting a power site is to be gauged by the amount of power produced, etc.

That, it is said, is in contravention of the doctrine that the states own the waters of the streams, because, it is said, the payment so computed will be for the use of the waters of the stream and not for the land.

Now, do not go away with any misconception about this matter. You see in me an advocate of the doctrine that the state owns the water of the streams within its borders, navigable or non-navigable. I am not developing the theory of the federal ownership of streams at all, and I do not stand up, taking the attitude I do on that subject, for the purpose of gaining favor with an audience with which it is popular. I argued that question before the Supreme Court of the United States once.

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Do not be misled by any statement such as was made here yesterday, that there is no question about the state's ownership of the waters of streams flowing over or across the public lands, and that no lawyer will assert the contrary, because when I argued that matter before the court of last resort the gentleman who was opposed to me put up a plausible, and it must be conceded, a strong argument for his side. He had most respectable and persuasive authority to sustain him and the question was so doubtful that the Supreme Court dodged it, and it remains undecided to this day. (Laughter and applause.)

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Bear in mind, however, that that is my stand upon the matter. I am not going to give up any control of the state over its waters. But the plan proposed contemplates nothing of the kind, nor does it imply government ownership of the waters of our streams.

The Government, obviously, does own the land. You cannot build a dam to hold or divert the water of the stream unless you acquire the right to occupy the Government

land upon one or both sides of the river.

Suppose that a private owner owned that land upon both sides of the river. It is asserted, and to that doctrine I yield assent, that the Government owns these lands not as sovereign, but as proprietor, exactly the same as the private individual.

Suppose that Governor Spry, our chairman, as a private individual, owned the land on both sides of a stream. There is a waterfall right there, that has never been developed. The water tumbles over in a cascade, he owning the land on both sides of the stream. The man who wants to develop power there has got to acquire, in some way or other, the right to use that land.

He goes to the Governor and says, "I will give you fifteen thousand dollars for this land."

Governor Spry replies, "No, I decline to sell."

"Well," says the man, "I will lease it for fifty years and give you five thousand dollars a year for the use of the land."

Governor Spry says, "No, I will not do that."

The man says then, "What will you do?"

The governor says, "You build your power site here and you pay me twenty-five cents for every horsepower that you develop and sell, and I will let you have the land for fifty years on those terms."

Do you see any objection to that kind of a contract? Do you feel that the superstructure of our system of government would rock upon its foundation and that the edifice of our Constitution would suffer collapse if he entered into it? (Laughter and applause.) Isn't it absurd?

Well, if a private owner may with safety be permitted to make such a contract, why may not the general government as a private proprietor of land?

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My friends, this proposition of federal control of waters, of which you have heard so much, is not in this case at all. It is simply a question as to which method of computation will be adopted to determine what shall be paid for the use of the Government land. That is all there is to it.

Now, here is the situation. Many people in the East who have given much thought to this matter and who are watching the proceedings here with some degree of care, and whose views we can not afford to ignore if we expect to get anywhere, are insistent that that shall be the method of computation. It is not very much for us to concede, is it? You do not concede any principle at all. I think those who want some power legislation will not find it hard in their hearts to agree.

Look at it! The highest royalty that anybody has ever suggested is a dollar a horsepower, and from that on down to ten cents a horsepower. The bill provides that the Secretary shall approve of the lease and that the power company is to occupy the property for five years without ever paying a dollar for its use and then we will say, ten cents a horsepower for the next five years, and then twenty-five cents a horse-

power for the next ten years and then fifty cents a horsepower for the balance of the term of the lease.

Suppose the charge mounted up to as much as a dollar a horsepower. The Montana Power Company has a contract with the Chicago, Milwaukee & St. Paul Railway Company, by which the former agrees to furnish electricity with which to operate the road of the latter for four hundred and fifty miles in Montana and Idaho at twenty dollars a horsepower. Do you think if they had been obliged to ask for twenty-one dollars a horsepower instead of twenty dollars, in consequence of being obliged to pay one dollar into the federal treasury, it would seriously have interfered with power development in our state carried on by the Montana Company?

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Next, if the permit for a limited period of time is authorized, the inquiry presents itself, shall the Government have the right to take over the power plant at the expiration of the period, and if not, what disposition should be made of it? Of course, it should have the right. There is hardly a municipality in this country today that in granting a right to a water company to lay down its pipes and mains in the streets of the city that does not insist upon a clause that at the end of the period of twenty-five or thirty years or forty years, as the case may be, the term for which the franchise is granted, it may take over the plant, paying the reasonable value, not including anything for the franchise which has expired.

Next, if the plant should be taken over by the Government, what rules should be adopted to determine the amount to be paid for the property on taking it over?

Here arises a sharp conflict of opinion. Some who are friendly to the general principles of the Ferris Bill insist that it should provide simply that the fair value of the property be paid should it be taken over. Others, fearful of imposing upon future generations the burden of paying for the "unearned increment," desire to exclude all such elements as intangible property, good-will, going concern value and the like.

We might have very profitably devoted some of the time that we have consumed here, to little purpose I fear, in considering that interesting question.

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I want to advert here to the most amusing and entertaining address to which we listened last evening. It was delightful. It took our thoughts away for a time from the serious questions which have engaged our attention and gave us a much needed rest. (Applause and laughter.)

Let me ask you, if you followed the speaker, what is the logic of the argument advanced with so much wit and eloquence? It is, as a matter of course, that you should grant to street railroad companies rights in perpetuity to occupy the streets of your cities and that you should grant to water companies, in like manner, the right in perpetuity to occupy the streets of your city with its mains,

and that the electric light company ought to have from you a perpetual franchise, and that like privileges should be granted to these great companies which enjoy them in perpetuity.

He did not attempt to differentiate between such public utilities and a company offering to provide the public with electric energy. He talked to you about escheats and confiscation, and what they did down in Peru and Judea.

James Russell Lowell said that they didn't know everything down in Judea.

There is no confiscation, no escheat here. On the expiration of the lease, the power company has no further right to occupy the site. It is not confiscated, nor does it escheat. It reverts to the government just as land which is held in private ownership and leased for a term comes back to the original owner when the period of the lease expires. For the dam erected, the whole plant, transmission lines and the like, they are paid the fair value if the option to take over the property is exercised. The investor is fully protected against anything like confiscation.

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Now as to the next point, point number five. The law might provide that it should not be in force in any state until it has laws reposing in some governmental authority the power of fixing rates for electrical energy, or the power to fix rates might be reposed in some federal authority in the event that the state does not make appropriate provision. It has been charged here that the Ferris Bill implies that the public land states do not know how to take care of their own affairs and undertakes to regulate them accordingly.

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What does the Ferris Bill provide in respect to the regulation of rates? It provides that in every state that has a public authority charged with the fixing of rates for power that matter shall be absolutely controlled by the state authority.

Much has been said on this floor and in the public press of this city about federal control. Shall these sites be developed by individual initiative or under federal control, the Chamber of Commerce pamphlet asks?

In what respect is federal control characteristic of the plan of development proposed by the Ferris bill? The government leases for a period of fifty years. It has no control over the development any more than an owner of a lot in this city who leases it for a like period has over the use to which it shall be put.

If control exists anywhere it must be in the regulation of rates. But the whole matter of rate regulation, under the provision of the Ferris Bill, is left—and I want you to understand it thoroughly—is left in every state having a commission or other authority vested with the power to fix rates to the regularly constituted state officers.

You have a public utilities commission here in Oregon, I understand. So you need not give yourselves any concern about federal

control here in the State of Oregon. It is, I must assume, for the poor down-trodden power companies of Utah, that some of your papers shed such copious tears.

Governor Lister, have you a public utilities commission in your state?

GOVERNOR LISTER: Yes.

SENATOR WALSH: Then the State of Washington need not trouble itself over the question of federal control.

Judge Kahn, have you a public utilities commission in the State of California?

CONGRESSMAN KAHN: Yes.

SENATOR WALSH: Then the State of California need not worry about federal control. We have such a public utilities commission in the State of Montana. Where, then, is this much dreaded federal control to find its field for oppression and disaster?

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The law does provide that in any state that has no law to protect its citizens from extortion by these public utilities companies, the Secretary of the Interior shall have the right, until and only until it enacts one, to regulate the rates and also regulate the issuance of stocks and bonds by power companies securing federal leases to see that they do not over-capitalize.

What and where is this awful specter of federal control? My friend Senator Smoot contends that if this system is put in vogue at all the power of fixing rates should be reposed in the Interstate Commerce Commission instead of in the Secretary of the Interior. I would not stop to debate that matter one moment.

My own idea is that the Interstate Commerce Commission is already overburdened with its duties, of such transcendent importance, but if you differ with me about that just let us agree that the Ferris Bill be amended in that particular. The provisions to which your attention has been called refer to intrastate business only.

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In whom shall power be imposed to establish rates in interstate business? Suppose there be developed power over on the Washington side of the Columbia River, which is taken over into Portland. Would you like to have a public service commission of the State of Washington regulating the rates which you would have to pay to that company? Do you object to putting in a federal authority the power to regulate rates in the case of the development of power in one state and its transmission for use in another state?

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Finally comes the question of what disposition is going to be made of the proceeds, if this measure should go into force. All sums received out of the disposition of the public lands goes into the reclamation fund.

We are proud of that act. We believe it was the achievement of statesmanship, and I want to pay my respects to the distinguished gentleman who spoke here last night who referred in such an enthusiastic way to the statesmanship

at the bottom of the Reclamation Bill, which provides that all avails from the sale of land shall go into this fund.

I repeat, the bill provides that all receipts from these lands should go into that fund. The Senate Committee amended that so as to provide that half of the proceeds should be paid directly into the state treasury of the state in which the power is developed. The other half, under this amendment, is to go into the Reclamation Fund.

If we can only entice the representatives from the East—three-quarters of them you know, coming from states having no public lands—if we can entice them to concede to our state half of everything that comes out of the rentals of power sites within it, I shall rejoice with you at the achievement, but with such knowledge as I have of sentiment in Congress on the subject I am not sanguine about that feature of the bill as it stands.

I must apologize for having taken up so much of your time. I sincerely hope that you may yet be prevailed upon to direct your attention to the consideration of the wisdom of the policy I have outlined, because our people must make their choice between a continuance of the deplorable condition that prevails and the acceptance of some plan in its general aspects like that which has been offered us. Our time could have been more profitably spent, in my humble judgment, in an endeavor to devise amendments to the Ferris Bill in an effort to make it conform more nearly to the sentiment prevailing in this part of the country. A determination to reject it as a whole, to repudiate the principle without going into its detailed provisions at all, is tantamount to a declaration that no water power legislation at all is preferred and hoped for. (Applause.)

During Morning Session Wednesday, September 22, 1915.

THE CHAIRMAN: The next speaker on the program is the Honorable Reed Smoot, United States Senator for Utah, who has been asked to speak to the subject, "Federal Tax on Water Powers." (Applause.) Gentlemen, Senator Smoot. (Applause.)

SENATOR SMOOT: Mr. Chairman and Gentlemen of the Conference: Perhaps it would be out of place for me to refer to the remarks made this morning by the distinguished senator from Oregon in alleging unfair means taken by the Governor of the State of Oregon in asking men to speak at this Conference and the arrangement of the program, but I have been asked to say just a word or two to let the gentlemen present know the situation as it really exists. so that there may be no misunderstanding.

In the first place, I wish to say that the Hon. Lindley M. Garrison, Secretary of War, was extended an invitation to be present and speak at this Conference. He declined.

Such was the case with Major Ansell, his assistant. A special request was extended to Hon. Franklin K. Lane, Secretary of the Interior, also. Also to Hon. George Otis Smith, the Director of the United States Geological Survey at Washington, D. C.

This is also true of Edward C. Finney of the Interior Department, who appeared before the Public Lands Committee representing the Secretary of the Interior.

Hon. David S. Houston, Secretary of Agriculture, was invited to be present and address this Conference. Congressman Oscar W. Underwood of Alabama was asked to be here.

I was sorry to hear stated this morning that none of the senators of the Public Lands Committee of the Senate who signed the majority report were asked to be present. We had read to us yesterday, a statement from Senator Pittman of Nevada. He was asked to be here.

We find, also, Senator Myers, Chairman of the Public Lands Committee, is an accredited delegate to this convention. No doubt he, too, would have been asked to speak, and as I understand it, there was no one that was asked to deliver a set address that was a delegate, or expected to be a delegate, at the time of issuing the invitation to speakers.

Again, the distinguished Senator stated that the Governor of Oregon had appointed all Republicans. But, if I am not mistaken, my friends, the Legislature of Oregon appointed these delegates. Maybe I am mistaken. (Cries: You are not mistaken.)

So, if there is any criticism, it should be directed to the Legislature of this State, and not to the Governor thereof!

I do not know just what course to take today, but I feel like abandoning the address I have already prepared, and going into the further details of this question and discuss the Ferris Bill and inform the gentlemen here of the things that took place before the Public Lands Com-

mittee, and yet, if I did it, I think perhaps it would take too long a time, and perhaps we may have some time to discuss those questions when the report is made to this Conference by your Committee on Resolutions.

And, therefore, upon second thought, I think perhaps I would better give to you my views upon the subject that was assigned to me when the invitation to me was issued. I agreed to speak upon it at this time.

If there is any time when I have concluded, I may want to ask the indulgence of this body to answer a few of the statements that have been made this morning, and to show you that there are two sides to the questions discussed. No doubt, every one present realizes that, now. But it seems to me that they are so plain that it would take but a few minutes to convince any man that the vital questions have been evaded, and swept aside by the wave of a hand, and you are expected to believe all the intimations that have been made.

But, the subject assigned to me was, "Federal Tax on Water Power."

FEDERAL TAX ON WATER POWERS.

Address by United States Senator Reed Smoot.

Before the adoption of the Constitution of the United States and the inauguration of President Washington, this country did not have in a true sense a national government. The actual governments were the governments of the thirteen original states.

For purposes of defense against British oppression, there was indeed, among these states, a union and independence of action which were finally and formally announced to the world in the Declaration of Independence, and gloriously achieved by the War of the Revolution.

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Subsequently, under the Articles of Confederation, an effort was made to provide a form of government for this Union; but it signally failed, for the simple reason that the chief powers of government, of sovereignty, of jurisdiction, of eminent domain in a broad sense, were withheld from it.

Chief among these powers, the lack of which well-nigh reduced the Confederation to impotency and dissolution, were the powers to raise money by taxation and by loans on the credit of the United States, and the power to regulate commerce with foreign nations and among the several states.

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In fact, the Articles of Confederation created a league of sovereign states and not a nation.

Its Congress, as the name originally implied, was an assembly of delegates from the states.

It was a deliberative and advisory, rather than a legislative body.

It could make requisitions upon the states, but it had no power of collecting them.

It could not act directly upon individuals at all.

It remained, therefore, for the Constitution to create the nation as an entity, and to provide for it a national government with sovereign powers.

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It is very interesting and important to note that the first effective step which led to the calling of the Philadelphia Convention which framed the Constitution was a meeting of commissioners of the States of Virginia and Maryland at Mount Vernon in 1785, for the purpose of settling "the jurisdiction over waters dividing the two states." (Applause.)

This was followed in 1786 by a

resolution of the Virginia Legislature proposing a meeting of deputies from all the states to discuss the best means of securing a uniform treatment of commercial questions.

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Pursuant thereto a convention, attended by deputies from only five states, met in the fall of 1786 at Annapolis; and, in the words of Mr. Madison, this convention, "thin as it was, did not scruple to decline the limited task assigned to it, and to recommend to the states a convention with powers adequate to the occasion."

As you all know, it was in conformity with the call of the Annapolis Convention, drafted by Colonel Hamilton, and unanimously agreed to, that the great Convention met at Philadelphia in 1787 and evolved the Constitution under which we live and have grown to be the foremost nation in the world.

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The purpose of that convention in framing the Constitution and of the people of the states in adopting it, as declared in its preamble, was to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to themselves and their posterity.

In order to carry out these purposes, the states and their people delegated to the General Government certain powers of a national character, and expressly declared that the Constitution and the laws of the United States made in pursuance thereof should be the supreme law of the land.

Of necessity, and by the express terms of the Tenth Amendment, the powers not delegated to the United States by the Constitution, not prohibited by it to the states, are reserved to the states respectively, or to the people. (Applause)

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There was thus created a dual form of government, federal and state, each sovereignty operating directly upon the same individuals, —a thing unknown before in the world's history.

To preserve that form of government in its integrity, both as respects the states and the nation, should be the prayerful purpose not only of our statesmen but of all patriotic citizens.

It is a sacred heritage, transmitted to us by our forefathers, which we are in duty bound to transmit in all its vigor and glory to our posterity. (Applause)

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The Constitution of my own State of Utah contains a declaration that

> Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government,

and that of the Commonwealth of Massachusetts likewise declares that

> A frequent recurrence to the principles of the Constitution is one of the things absolutely necessary to preserve the advantages of liberty and to maintain a free government.

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It is in the light of history, and

from the viewpoint of the fundamental principles of the Constitution so illuminated, which every intelligent citizen should understand, that I desire to discuss, in the brief time allotted to me, the subject of "Federal Tax on Water Powers."

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The first of the enumerated powers of Congress under the Constitution are the power to raise money by taxation and loans, and the power to regulate commerce,—powers, the lack of which rendered the old Confederation lame and impotent.

Ever since the decision of Chief Justice Marshall in the case of Gibbons against Ogden, to the effect that the power delegated to Congress to regulate interstate commerce comprehended the power to regulate and control navigation, notwithstanding the laws of any state to the contrary, there has been no doubt whatever concerning the power of Congress over the navigable waters of the nation for that specific purpose.

But the power to regulate and control the appropriation and use of water for all other purposes, inherent in the states, and not delegated to the United States by any provision of the Federal Constitution, still resides in the several states, and, in my humble opinion, they can only be deprived of this power by an amendment of the Constitution.

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It may be conceded that when the Federal Government, in order to improve navigation, builds dams and locks in any of our navigable streams and thereby creates with the expenditure of its own money a surplus water power, it acquires a property right in such power which it may use, lease or sell to the best advantage, just as it might lease or sell a building which it had erected for some authorized federal use, but no longer required, in whole or in part, for that purpose.

It would hardly be contended, however, that the Federal Government could go into the business of erecting office buildings and residences for rent, or that it could build dams and power plants solely for the purpose of selling power in unfair competition with its own citizens.

Such things are not contemplated or authorized by the Constitution, and would be unfair, largely for the reason that the states cannot tax federal property.

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But, the Senator from Montana has stated that wherever there was a tributary right, that right could be taxed. Nobody denies that. When the United States Government grants a homestead right to a man the land becomes taxable property of the state, would you have the Government of the United States do otherwise? The state taxes the land and all improvements. It pays its fair share of the maintenance of the state, and no one denies that if a power company erects a power plant upon government land, even under the Ferris Bill, but what all of the improvements would be taxable by the state, but I do deny at the end of

the lease when the United States Government takes over the plant that the state then can tax the Federal Government for it. (Applause.)

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It is contended, however, that because the Federal Government happens to own the technical title to vacant land in some of our Western States, it may dictate the terms on which that land may be used in connection with the beneficial use of water.

That is the subject to discuss. That is the fundamental principle of the Ferris Bill. I deny that this point is raised to cloud the issue, as was stated this morning.

I never want to dodge an issue. I never did it in all my life, and I hope I never will live long enough that there will be an occasion that I will feel compelled to dodge a question of public importance. I would rather go out of public life a thousand times than be compelled to do so. (Applause.)

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It is contended that, as the Secretary of the Interior has recently said, he may, as the custodian of such lands, consent or dissent to such use, and thus override the laws of the state on the subject of the appropriation and use of water.

Such a government,—if it can be called a government at all,—is a government of might and not of right. (Applause.)

And it should be here noted and remembered that if this novel assertion of arbitrary power by the Secretary, or even by Congress, should be maintained as a part of the law of the land, then the consent of the Secretary or of Congress would be necessary for any use of water involving easements over the public land, whether for domestic, municipal, mining, agricultural or other uses.

This would place the settlement and development of our arid states entirely at the mercy of one man or set of men,—a thing utterly abhorrent to our ideas of a free republican government. (Applause.)

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This brings us to the fundamental question, whether the existence of public land in a state gives to the Federal government any other or greater governmental powers than it has in those states which are so fortunate as to have no public lands.

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Now, the subject of the public lands is intimately interwoven with the very formation and fabric of our Union.

At the time of the adoption of the Articles of Confederation there were conflicting claims among the original states to the waste and unoccupied lands lying west of the Alleghanies.

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Following the recommendation of Congress and the noble example of Virginia, then the foremost state of the Union, various states made cessions of their claims covering this territory, both as regards soil and jurisdiction, to the United States; and it is well known that Maryland withheld her assent to the Articles until this question of the disposition of the public or crown lands was practically settled.

One of the conditions of these sessions, in the deed from Virginia, and of other states following her unselfish example, was that the territory so ceded should be faithfully disposed of for the purpose of creating new states and

> that the States so formed shall be distinct Republican states and admitted members of the Federal Union, having the same rights of sovereignity, freedom and independence as the other states.

And so, as far as I am concerned, if I understand the people and their wishes in this matter, they will contend for these rights for their states, and they will never be contented until they obtain them. (Applause.)

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These deeds of cession were accepted by Congress, and thus the faith of the United States was pledged to carry out their terms and conditions.

I know of no legal method by which this obligation resting upon Congress can be enforced, because under the Constitution it has the absolute power of disposal, and may sell or withhold from sale.

But when Congress admits a state into the Union—and there is likewise no higher power which can control its discretion in that matter—the State becomes a State *of* the Union, endowed with all the rights and powers of the other states, and subject only to the limitations expressed in the Constitution.

The Act of Congress, indeed, admits it into the Union; but its status in the Union is established and protected by the Constitution. And in the very necessity of the case, all of the States of the Union are on an equal footing in all respects whatever.

With the exceptions of Vermont and Kentucky, which were admitted as new and entire members of the Union, and which had no public lands within their borders, the acts of admission of all the new States contain an express declaration to that effect.

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Our fathers were careful to make the distinction between soil and jurisdiction, between the proprietary right and the governmental power.

When a State is admitted into the Union, it becomes vested with all the governmental powers which the Constitution has not conferred upon the General Government, nor prohibited to the States; and, while the primary disposal of the soil remains subject to the rules and regulations made or authorized by Congress, the jurisdiction over it passes to the State.

It is true that the United States may reserve or purchase lands for federal uses within a state, for the erection of forts, magazines, arsenals, dock yards and other needful buildings; but in those cases its jurisdiction rests upon cessions by the particular states. This is even true of the District of Columbia.

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Taxation is the highest exercise of governmental power. It is the taking by the sovereign of a portion of the property of private individuals for the support of the government and its institutions; but under the Federal Constitution, the

exercise of this power is subject to the just limitation that it shall be *uniform throughout the United States.*

But when it is not uniform, it is contrary to and a violation of the Constitution of the United States, the delegation by that Constitution of power to every state that enters the Union. (Applause.)

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The taking of private property for public or quasi-public uses, and the regulation of rates and service of public-service corporations, are also the highest exercise of a governmental power, or eminent domain; but the exercise of this power is subject to the limitation that it shall be upon the payment of just compensation.

That is quite a different story than that pictured to you a little while ago, when it was stated that if an individual owned 160 acres of land on one side of the river and a power company 160 acres of land upon the other side of the river, and the power company went to the individual and offered five thousand dollars for the land, the owner had a perfect right to say, "No, I will not take $5,000 nor a cent less than $50,000," no one denies that to be the case.

But, the speaker did not tell you that the company, as a public utility, had the right of eminent domain, and if the individual owner refused to sell the land or lease it, the company could condemn it—take it from him through condemnation proceedings and the court fix the price.

He did not tell you that at the end of the lease, if the land was government land, the Federal Government could acquire all the power company's property and that no taxes could be imposed upon it as long as the government owned it. But if the title of the land was in the state or individual or corporation of a state, no matter what became of the power company—the sovereign power of the state could tax the plant and in case of individual ownership of land tax the land as well to maintain the institutions of the state.

That illustrates one point—that the western people are complaining of, and I believe that the people of the United States, when they understand it, will say it is a just complaint. (Applause.)

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Now all these things, and more, are attempted to be done, so far as power development on or in connection with the public lands is concerned, by existing regulations of the Departments of the Interior and of Agriculture.

Vigorous attempts are now being made by these departments, particularly by the Department of the Interior, to induce or coerce Congress into the enactment of legislation predicated on and along the lines of those regulations.

The avowed purpose of these regulations and of the proposed legislation is to produce revenue for the General Government. It is an attempt to do indirectly what cannot be done directly. I want all of my friends to understand that one question. If I had the time I would like to present to you

today evidence by untold number to prove this assertion.

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The time allotted me today will not allow me to discuss in detail the merits and demerits of the Ferris Bill.

I do not hesitate, however, to state that the principles involved in it go to the very constitutional rights and life of the states.

It has been declared by the Supreme Court that our Union is "an indestructible union of indestructible states."

The indestructibility of the Union was finally settled by a cruel and boody Civil War. May I ask what will it require to forever establish the indestructibility of the states, which is just as important to the future life of our country as the indestructibility of the Union? (Applause.) The destruction of the balance of power between the states and the Union by the usurpation of the constitutional rights of the state by the Union must never happen or be allowed. (Applause.)

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The officers of the Interior Department when told that legislation affecting the waters of a state should be enacted by the legislature of the state, that an Act of Congress interfering with the control of the waters wholly within a state is governmental usurpation, reply that the state governments are weak.

How often have I heard it said that the state governments are weak, and how often have I been told that the Western States are weak.

They have said that we cannot protect ourselves against the politicians and that the Western States are unable to govern themselves, and that it requires the power and wisdom of department heads and bureau clerks to protect the people's interests and to conserve the natural resources of the states. (Applause.)

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Why, my friends, if this were all true, which it is not, it would not be a sufficient cause for the destruction of the fundamental plan of our government.

Are the Western people going to surrender local self-government to a centralized departmental power at Washington?

If so, the progressive and prosperous career of our Western States will come to an end.

Any usurpation, the result of which will be the destruction of the rights of a sovereign state even if it is under the pretense of taking care of the people of the state, will be resented by the American people whenever they become informed of such a program. (Applause.)

In this connection I call your attention to a speech delivered in New York in 1837 by Daniel Webster, so applicable to present day conditions:

> I have nothing to do with the motives of those acts which I believe to have transcended the boundaries of the Constitution.
>
> Good motives may always be assumed, as bad motives may be imputed.
>
> Good intentions will always be pleaded for every assumption of power; but they cannot justify it

even if we were sure that they existed.

It is hardly too strong to say that the Constitution was made to guard the people against the dangers of good intentions, real or pretended.

When bad intentions are boldly avowed, the people will promptly take care of themselves.

On the other hand, they will always be asked why they should resist or question that exercise of power which is so fair in its object, so plausible and patriotic in appearance, and which has the public good alone confessedly in view.

Human beings, we may be assured, will generally exercise power when they can get it; and they will exercise it most undoubtedly, in popular governments, under pretenses of public safety or high public interest.

It may be very possible that good intentions do really sometimes exist when constitutional restraints are disregarded.

There are men, in all ages, who mean to exercise power usefully; but who mean to exercise it.

They mean to govern well; but they mean to govern.

They promise to be kind masters; but they mean to be masters.

They think there need be but little restraint upon themselves.

Their notion of the public interest is apt to be quite closely connected with their own exercise of authority.

They may not, indeed, always understand their own motives.

The love of power may sink too deep in their hearts even for their own security, and may pass with themselves for mere patriotism and benevolence. (Applause.)

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"There is nothing," said James G. Blaine, "of which a public officer can be so easily persuaded as of the enlarged jurisdiction which pertains to his office." (Applause.)

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The "leasing laws" proposed in the last Congress, and especially that with respect to water power, are undoubtedly intended to cure corporate evils by process of indirection.

They substitute for individual initiative, upon which this country was built up, benevolent despotism, and in the last analysis they are but the return to, or the approach to, the old Feudal System out of which the English people escaped in the days of the "Magna Charta."

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If the Ferris Bill should become a law it will be but the second step in establishing as a governmental policy the leasing of the remainder of the public domain. (Applause.) Do you want your children to be tenants of the Government, or home-owning citizens? (Applause.)

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And I speak from actual knowledge, based upon the introduction of bills into Congress—in both Houses—and I am sorry to say that I found behind them the power of many of the Government officials and department heads.

I have seen this leasing policy growing steadily — steadily but stealthily—for a number of years.

The Forester referred to the fact that the cattlemen of the country are in favor of the leasing system.

Why, of course, they are in favor of the leasing of all of the Government lands remaining and leasing it to them.

There is always a provision in

the proposed legislation leasing the grazing lands that the homesteaders may make entry upon the leased land. Oh, the homesteader that would undertake such a thing! If I were a jackrabbit I would just as soon trust my fate in the jaws of a coyote as I would my chances as a homesteader in the center of a great cattle ranch, and have the cattle king and cowboys instruct me as to what I must do. (Applause.)

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If this program should unhappily be carried out, and Congress should be guilty of the supreme folly of enacting such legislation, it would be a direct encroachment upon the high prerogatives of the states and their people to manage and control their own internal affairs.

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What is the excuse for such proposed legislation, and who are the people clamoring for it?

On the one hand, we find the bureaus, eager to increase their power and their revenues; on the other hand, we find some of the power companies, eager for the profits of financing and operation, willing to pay any charges exacted by the bureaus so long as they can continue to pass them on to the people.

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I wish that the Senator from Montana had continued reading the testimony of Mr. Ryan before the Public Lands Committee. (Applause.) If he had continued reading what Mr. Ryan had to say in his testimony before the Committee it would have appeared that this proposition was made by Mr. Ryan:—that it makes no difference to him or his company what the charge may be if they can pass it on to the people. (Applause.)

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There is another thing. A dollar a horse power! It does not amount to anything, so we are told! I want to say to you, my good friends, if you were engaged in the development of electric power, you would know that it would amount, more times than otherwise, to taking all the profits that would come to the electro-hydro power company, and if they could make that amount—a dollar per horse power generated—many of them would be very, very contented.

Add $1.00 to the energy that is developed, and it would amount to more, in my opinion, than the profits of most of the companies in the United States. Why, one dollar is five per cent of twenty dollars. However, I need not spend any more time upon this question, but will resume my address.

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If any such legislation is enacted by Congress, and if it is what the bureaus and the power companies term workable, it will be in fact, if not in intent, the result of a conspiracy between the bureaus and the power companies to rob the states and their people, not only of their property but of their just rights and privileges, and to divide the spoils.

Some of the power companies are frank to say that they are indifferent concerning the amount of the tax, provided it is definitely fixed

beforehand, and is not more than the traffic will bear; for it becomes a part of their operating expenses, which they may legitimately get back from the people, either through increased rates for service or by deferring reductions in rates, which reductions the people served have a right to expect as the business grows and other operating expenses decrease.

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Some of the power companies, indeed, seem inclined to prefer the distant and indifferent, and perhaps more pliant, control of an irresponsible bureau, rather than that of the immediate representatives and governing bodies of the people whom they serve.

Some, on the contrary, are broad-minded enough to see that their interests and the interests of the people are mutual, and that the prosperity of both goes hand in hand. (Applause.)

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We do not find that the states or the people are clamoring for this innovation in legislative activity.

All that they desire is to live and let live, to develop their resources and to manage their own internal affairs so as to furnish employment to both capital and labor, under a constitutional form of government —a government of laws and not of men—in which their own governmental and proprietary rights are respected.

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The constitutions and laws of many of our Western states declare that the waters of the states are the property of the states or of the public, and some of them express an order of preference in uses, as for domestic, agricultural and manufacturing purposes.

The laws of this state provide that:

> The use of the water of the lakes and running streams of the State of Oregon for the purpose of developing the mineral resources of the State, and to furnish electrical power for all purposes, is declared to be a public and beneficial use and a public necessity, and the right to divert any unappropriated waters of any such lakes or streams for such public and beneficial use is hereby granted.
>
> All waters within the State from all sources of water supply belong to the State.

But the right of the states really rests on higher ground than any mere proprietary claim. To say that the state owns the water—whether in the form of fog and rain which I understand are frequent in these regions, or in lakes or running streams—is to use a figure of speech.

Ownership is defined as "possession coupled with the unqualified right of possession."

Until the water is reduced to possession and control, it can hardly be said to be the subject of ownership at all. The state, however, has the police power and authority to declare how that ownership may be acquired and used, and what limitations may be put upon it.

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When that governmental power of the state comes in conflict with the proprietary interest of the Federal Government, which should pre-

vail? Clearly, the governmental power. (Applause.)

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What is the rule when the Federal Government appropriates and dedicates to the uses of commerce one of our navigable streams?

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The proprietary right of the state or the riparian owner in the beds of navigable waters is held subject to the exercise of that power of Congress, and the Supreme Court has declared that in such case there is no "taking" in the sense in which that word is used in the Constitution, but merely the exercise of an inalienable power of government; and, that when there are no grounds for estoppel, the government is under no obligation to make compensation to the state or to the riparian owner.

If it were otherwise, the states might impose such burdensome charges and restrictions upon the exercise of this federal power as to render it nugatory. That I understand to be the doctrine laid down by the Supreme Court in the Chandler-Dunbar case.

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In precisely like manner, the technical title to the public land is held subject to the exercise of this governmental or police power of the states to control and regulate the appropriation and use of their waters for all purposes except navigation.

If it were otherwise, the public-land states might not only be stripped of all governmental powers, and their laws rendered inoperative, but their sources of revenue would be dried up, and their industrial progress arrested.

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This power of local control over the subject of water in connection with rights of way over the public lands was recognized in the Act of 1866, which declared that whenever rights to the use of water had vested and accrued under the local laws, a right of way therefor over the public domain was recognized and confirmed, and the right to construct was made subject to the sole condition that compensation should be made for any damage thereby caused to the possessory rights of settlers on the public domain. That law gave to the territories the same rights which it recognized as belonging to the states.

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Assuming, however, for the sake of argument, that Congress has the constitutional power to tax and regulate an industry under the guise of leases of easements over the public land—an assumption which I most emphatically deny—what wise purpose of government is subserved by exerting that power?

Uncertain tenure, arbitrary control, burdensome taxes and prospective confiscation are no invitation or inducement to capital to invest in any industry so conditioned, (applause) but quite to the contrary.

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There is no industry in the world more deserving of encouragement than hydro-electric power.

Not only are the manifold uses of electricity becoming more and more a necessary part of our social and

industrial life, but the use of cheap electric power in pumping for irrigation, in the manufacture of fertilizers by the fixation of atmospheric nitrogen, may become an important factor in solving the pressing problem of the high cost of living, and its use in the manufacture of nitrogen explosives may become a matter of tremendous import in providing for our national defense.

It is well known to all of you that the attitude of our government during the last two administrations has prevented capital from investing in these enterprises and, to our irreparable loss, driven it into other countries.

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The proposed legislation includes many of the features of an old system discarded and discredited three generations ago.

Among these is a provision to divide the proceeds of federal leases equally among the public-land states and the reclamation fund.

The people will hardly be deluded into the belief that they are going to be enriched by having money taken from one of their pockets, and withheld from their use in developing the country, with a chance that all or a part of it will at some future time be put back into another of their pockets.

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In discussing a somewhat similar measure in the United States Senate in 1832, Senator Benton of Missouri said:

> But there was a new feature to be introduced into the report. The new States were to be seduced into the measure by the offer of a slice from their own territory. He had heard an instance in which after the horrors of shipwreck, when the survivors were reduced to the extremity of feeding on each other, one man, who was to be the next victim, in a fit of desperate agony, begged to be indulged with a slice from himself. So it appeared the new States were to be regaled with a slice of themselves, and then torn limb from limb. (Applause.)

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Our public-land policy, since Benton's time, as well stated in a resolution unanimously adopted by the Conservation Congress held in the City of Washington in *November, 1913*, is as follows:

> *Be It Resolved*, That the established, traditional and sound policy of the United States with respect to the disposition of its unappropriated public lands is opposed to the making of a direct revenue thereby, beyond the expense incident to the surveying, classification and disposing of such lands, but on the contrary that said policy is intended to encourage and promote that settlement and development thereof; and that any act of Congress, or any administrative construction thereof, which is not in harmony with this policy, does an injustice to the new states by placing them on an unequal footing with the original states and by discouraging and preventing the settlement of such new states and the development of their resources. (Applause.)

So say I and so say you, and so say all of the people of the United States. They will approve when they know the truth in the case.

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If the United States ought not

to adopt a policy of making a revenue out of what it owns, the soil, how much less is it entitled to make a revenue out of what it does not own or possess, namely, the water and the governmental power to control its appropriation and use for beneficial purposes?

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When an appropriator of water digs his ditch or constructs his dam or other means of utilizing water on or across the public domain, he pays the expense of locating and surveying himself. If he files a map to give notice in advance of construction or afterward, he pays all the expense incident thereto. The government is put to no expense in that connection whatever.

On the other hand, when it sells its land, the patent is expressly subject to vested and accrued rights of way for the use of water for any and all purposes, and no deduction is made by the government either in acreage or price on account of such rights of way.

Hitherto the Government has never assumed that it could grant a water right. It has recognized that the right arises by virtue of use under the local law.

If it may now grant a right for power purposes, what would happen if the water were required for some higher use under the laws of the state, for domestic use, for example, or for irrigation or municipal uses?

If the United States should, under the option contained in the lease, acquire the property leased, and all other property dependent for its usefulness on the leased premises, where would its right to *acquire property within the state end, and how could the state tax property so acquired and held? How could the state regulate the rates and service of a plant owned and operated by the United States?* (Applause.)

Why, my friends, if this were true, the Government of the United States could have acquired a small strip of land surrounding your city and could impose a tax upon every man entering or leaving your city. (Applause.)

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What we want is more and cheaper hydro-electric power for all purposes. Can we get it by taxing it, as we have been doing,—practically taxing it out of existence?

Every purpose for which our fathers ordained and established the Constitution cries out against such tax, and against the leasing system by which it is sought to be enforced.

Such a system directly affects the autonomy of the public-land states, and thereby impairs our more perfect Union; it operates as a rank injustice to those states by depriving them not only of their rights guaranteed by the Constitution, but of the use of those natural advantages which God has bestowed upon them; the domestic tranquillity is adversely affected not only by the sense of the injustice of this system, but by its preventing that employment of capital and labor which a more liberal policy would insure; such a system leaves unprovided for an important element of the common defense, and overlooks the general

welfare entirely, and, finally the logical outcome of a system of leasing under the autocratic control of the central authority is absolutely destructive of the blessings of liberty under a republican form of government. (Applause.)

What would our fathers say if they could see the operation of this system by which the free citizens of the republic and of its sovereign states are to be transformed into tenants and permittees of the Federal Government, (Applause) lorded over and taxed without their consent by prefects sent from Washington? (Applause.)

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Gentlemen, the state which I have the honor in part to represent in that great body where all the states are equal, and which cannot be deprived of that equality without its own consent, could never have become a state under such a system.

And when I plead for the preservation of its rights as an equal member of the Federal Union, and the preservation of the rights of its people as citizens of this great Republic, I am pleading for the preservation of that Union itself, as our fathers founded it, and for the rights and liberties of all its citizens.

What constitutes a State?
  Not high-raised battlement or labored mound,
Thick wall or moated gate;
  Not cities proud with spires and turrets crowned;
Not bays and broad-armed ports,
  Where, laughing at the storm, rich navies ride;
Not starred and spangled courts,
  Where low-browed baseness wafts perfume to pride,
No—men, high-minded men,
  With powers as far above dull brutes endued
In forest, brake, or den,
  As beasts excel cold rocks and brambles rude—
Men who their duties know,
  But know their rights, and, knowing, dare maintain,
Prevent the long-aimed blow,
  And crush the tyrant while they rend the chain;
These constitute a State;
  And sovereign law, the State's collected will
O'er thrones and globes elate
  Sits empress, crowning good, repressing ill.

This question, gentlemen of all parties, is emphatically not a political question. It is one which concerns primarily the definition of the boundary between the governmental powers of the nation and of the states. In the correct solution of that question is involved the very preservation of our form of government, a matter of most vital present concern to every citizen of the Republic, as well as to the future of our beloved country.

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To demonstrate the non-political character of this question, let me quote from some of our great statesmen, living and dead. While the Constitution was being weighed in the balance by the people, and the fate of the new nation was still hidden from human eyes, Samuel Adams, the great tribune of the people, wrote as follows:

> I hope the Federal Congress is vested with powers adequate to all the great purposes of the Federal Union; and if they have such adequate powers, no true and understanding federalists would consent that they should be trusted with more; for more would discover the folly of the people in their wanton grant of power, because it might, and—

considering the disposition of the human mind — without doubt would be wantonly extended to their injury and ruin.

The powers vested in government by the people, the only source of such powers, ought to be critically defined, and well understood, lest by a misconstruction of ambiguous expressions, and by interested judges, too, more power might be assumed by the government than the people ever intended they should possess.

Few men are contented with less power than they have a right to exercise; the ambition of the human heart grasps at more; this is evinced by the experience of all ages.

And again he writes:

I was particularly afraid that unless great care should be taken to prevent it, the Constitution in the administration of it, would gradually, but swiftly and imperceptibly, run into a consolidated government, pervading and legislating through all the states, not for Federal purposes only, as it professes, but in all cases whatsoever; such a government would soon totally annihilate the sovereignty of the several states, so necessary to the support of the confederated commonwealth, and sink both in despotism. (Applause.)

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And Thomas Jefferson, the Father of Democracy, in the serene old age of seventy-seven years, after a long and useful life spent in the service of his country in the highest stations, wrote as follows:

It is not by the consolidation, or concentration of powers, but by their distribution that good government is effected. Were not this great country already divided into states, that division must be made, that each might do for itself what concerns itself directly, and what it can so much better do than a distant authority.

Every state again is divided into counties, each to take care of what lies within its local bounds; each county again into townships or wards, to manage minuter details; and every ward into farms, to be governed each by its individual proprietor.

Were we directed from Washington when to sow, and when to reap, we should soon want bread. (Applause.)

And Madison, another of our great presidents, not inaptly called the Father of the Constitution, writing in the *Federalist*, that splendid commentary on our fundamental law, which the Supreme Court has itself declared should not and cannot be disregarded in construing the Constitution, says:

The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiations, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several states will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.

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Expressions to the same effect have come from the lips and pens of all our eminent statesmen and jurists, and might be quoted with-

out number. I will add only two more, from our two living ex-presidents.

In his Life of Gouverneur Morris, Mr. Roosevelt characterizes the jealousy of the Western States, displayed by some of the members of the Constitutional Convention, as excessively narrow-minded, discreditable, mean and unworthy. And in another place he says:

> The man who fought for secession warred for a cause as evil and as capable of working lasting harm as the doctrine of the divine right of Kings itself.
>
> But we may feel an intense pride in his gallantry; and we may believe in his honesty as heartily as we believe in that of the only less foolish being who wishes to see our government strongly centralized, heedless of the self-evident fact that over such a vast land as ours the nation can exist only as a Federal Union; and that, exactly as the liberty of the individual and the rights of the States can only be preserved by upholding the strength of the nation, so this same localizing of power in all matters not essentially national is vital to the well-being and durability of the government.

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Mr. Taft, in his lecture at Yale, has recently spoken as follows:

> This great expansion of Federal activities has been almost within the present generation and within the recollection, and by the agency, of living men; but it has not changed the form of our government, nor has it lessened our obligations to respect the sovereign rights of the State.
>
> This brings me to a consideration of the importance of maintaining the constitutional autonomy of our States. Our Federal system is the only form of popular government that would be possible in a country like ours, with an enormous territory and 100,000,000 population.

And speaking of the withdrawal of public lands from sale—a question which has some apparent analogy, but really no connection whatever with the question assigned to me, for one relates to the disposal of the land, a purely proprietary question, while the other concerns taxation, eminent domain, and regulation, which are questions involving the exercise of governmental powers,—Mr. Taft says:

> The case is an exception because generally matters having such an immediate local importance are within the control of the people of the State. But the asperity and vigor of the complaints illustrate very well the inevitable result if everything were regulated from Washington and the State governments were reduced to nothing but agencies of the National Government.

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In this connection and in conclusion allow me to quote from the writing of John Fiske, the greatest philosopher among our historians, and the greatest historian among our philosophers. He says:

> Too much centralization is our danger today, as the weakness of the Federal tie was our danger a century ago.
>
> The rule of the Federalist Party was needed in 1789 as the rule of the Republican Party was needed in 1861, to put a curb upon the centrifugal tendencies.
>
> But after Federalism had fairly done its great work, at the beginning of the nineteenth century, it was well that the administra-

tion of our national affairs should pass into the hands of the party to which Thomas Jefferson and Samuel Adams belonged, and which Madison, in his calm statesmanlike wisdom, had come to join.

And now that in our own day the disruptive forces have been even more effectually and thoroughly overcome, it is time for the principles of that party to be re-asserted with fresh emphasis. If the day should ever arrive (which God forbid!) when the people of the different parts of our country shall allow their local affairs to be administered by prefects sent from Washington, and when the self-government of the states shall have been so far lost as that of the departments of France, or even so far as that of the counties of England—on that day the progressive political career of the American people will have come to an end, and the hopes that have been built upon it for the future happiness and prosperity of mankind will be wrecked forever.

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My friends, I love my country, and I want to say to you today that I am as jealous of her rights as I am of the rights of the sovereign states, but, God forbid that the government itself, shall, by legislation, try to wrench from the state the powers that have been conferred upon her by the Constitution.

It is not a question of seceding. We are not going to secede!

Let me say, it ill becomes a man to even intimate such a thing. (Applause.)

God knows that every man here, if his country was in trouble, or in danger, would offer his life for its preservation and defense! (Applause.)

There is no reason why the people of a state, if they feel aggrieved, and if they see a tendency to deprive them of their constitutional rights, that all must see who study the present situation, cannot appeal to the people of the country—that the blow be held back and not administered. I do not believe the people should be censured.

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I have thought it was out of place for me to speak upon this occasion after hearing certain charges made. We have been told by the public press, and from this platform, that this Conference has been prearranged. We have been told that its proceedings have been cut and dried.

All I know about it, my friends, is that I was asked if I would deliver an address on the subject I have presented to you at this time. I am just the sort of a man that if there were a majority of the Convention that opposed my views, I would not howl nor cry about it. (Applause and laughter prolonged. Cries of "right.")

I believe in a government of majority. God save us from the day when there is an American citizen anywhere who will be denied the right to speak freely upon any subject and give his views according to his judgment, and that is what I have done and intend to do at this Conference. I do not ask any man to vote other than for what he believes is for the best interests of all the people, and if he does not do it, he should not have the respect nor is he worthy of the

respect of the people that he represents.

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I have a number of questions that I wanted to take up and discuss with you, but it is one o'clock, and I will have to quit. But, do not think for a moment that I want to run away from them. (Applause and laughter.) I am sorry that I have not the time. That is all. But these questions may be touched upon by others, and I hope they will be.

Mr. Chairman and Gentlemen, I appreciate the invitation, and I hope that what I have said may be taken in exactly the same spirit as I have given it. I can assure you of one thing, that it came from my heart. I want my government and my state to be in full accord upon every question that makes for the prosperity both of the nation and of the state. I thank you, gentlemen, for your kind attention. (Applause.)

At 1:10 o'clock P. M., upon motion duly seconded, the Conference took a recess until 2:30 o'clock P. M.

Afternoon Session, 2:30 o'clock Wednesday, September 22, 1915.

Conference called to order by the Chairman.

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Announcement was made by the Secretary that the address of Henry J. Pierce of Seattle, a speaker of the Conference, invited by the Governor of Oregon to deliver a lecture on the "Commercial Necessity of Water Power Development," would be delivered at a banquet to be given at 6:30 o'clock this evening to the Delegates and Officials of the Conference by the Portland Chamber of Commerce in the Commercial Club banquet hall.

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THE CHAIRMAN: Gentlemen of the Convention, we are favored this afternoon with the presence of Mr. John H. Finney of Washington, D. C. We shall be very glad to have him participate in the discussion of the question. I have pleasure, gentlemen, in introducing to you Mr. John H. Finney of Washington. (Applause.)

MR. FINNEY: Governor Spry, Delegates to the Water Power Conference, Ladies and Gentlemen: I have the very great honor of representing before this Conference the American Institute of Electrical Engineers, the national engineering society dealing with the electrical art from its scientific and professional standpoint. The Institute is composed of the men who have created in the last four decades the electrical industry. It is non-sectional, non-political, and non-partisan, and what it says on the fundamental engineering questions that underlie the development of water powers may be considered as outside of the field of controversy, as it relates at least to the engineering and economic side.

The Institute has prepared a statement, and I have the very great pleasure in presenting it, and, with your permission, Governor, reading it.

WATER POWER DEVELOPMENT.

A Statement read to the Water Power Conference, September 22, 1915, by John H. Finney, on behalf of the Water Power Committee of the American Institute of Electrical Engineers.

To the Honorable Delegates to the Water Power Conference:

Dear Sirs:

Several years ago, for the purpose of obtaining expert technical advice bearing on its labors and investigations in connection with the development of water powers, and their relation to the problems affecting navigable and other streams, the National Waterways Commission invited The American Institute of Electrical Engineers to send representatives to the hearings of the commission in Washington, and in response to this invitation the gov-

erning body of the above named national professional society created a special committee on the Development of Water Powers, and authorized it to testify before the commission, and to put its expert knowledge and experience at the service of the commission in every way.

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The services of this committee, which was composed of the country's leading technical experts on water power, were appreciated by the commission, and led to the extension of other invitations to the American Institute of Electrical Engineers to send similar representatives to congressional and departmental hearings in Washington in connection with water power legislation, among these invitations being one from the Honorable, the Secretary of the Interior, one from the House Committee on Arid Lands, one from the Senate Committee on Public Lands, and others. In consequence of these successive invitations, the governing body of the American Institute of Electrical Engineers has continued its special committee, in view of the apparent appreciation on the part of various public authorities of the fact that the services rendered by the American Institute of Electrical Engineers were scientific and professional, and not commercial or political, and that its committee dealt with fundamental engineering and economic principles of hydro-electric development that were outside of the field of controversy.

The function of the American Institute of Electrical Engineers being scientific and professional, and not commercial or political, its status was one involving a high degree of disinterestedness in respect to matters on which its technical advice was sought.

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In response to the invitation of His Excellency, Governor James Withycombe, of the State of Oregon, conveyed through Mr. John H. Finney, a member of the Water Power Committee of the American Institute of Electrical Engineers, that committee has prepared, and has the honor herewith to submit, the following statement, which it is hoped may be of service to the Conference of Western Governors.

Certain fundamental facts regarding water development are not disputed. All authorities agree: That of the enormous power in the streams of the United States a very large percentage, representing many millions of horse power, is susceptible of commercial development; that of these undeveloped powers, which under favorable laws might be utilized, a very large percentage would have to occupy at least some land which is part of the public domain or is in national forests; that since 1909, when the revocation of certain permits and the withdrawal of certain public lands from entry as water power sites were made by the federal government, hydro-electric development has been greatly retarded; that this condition is largely due to inadequate federal laws which do not afford stability of tenure and which in other ways impose burdens and grave hazards of loss; that great industrial benefits to the

states and to the nation can be realized when the water power at present wasted is used to generate electrical energy, and thus to become available for many kinds of service over wide expanses of country; that the only method of development heretofore attempted in the United States is through private capital attracted by the prospect of profit, and that recent efforts to rectify the shortcomings of existing laws, and thus encourage development, have brought out radical conflict of opinion as to what provisions are necessary to attract capital and at the same time to protect the public interests.

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In accepting the invitation of the National Waterways Commission in 1911, a committee of the American Institute of Electrical Engineers prepared a statement of certain engineering facts and economic principles. Facts and principles do not change. The statement then submitted is as true and pertinent today as it was at that time, and is therefore repeated here, our committee believing it cannot more briefly and clearly than in this way place certain information at your disposal.

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Letter to U. S. National Waterways Commission

AMERICAN INSTITUTE OF ELECTRICAL ENGINEERS.

November 17, 1911.

To the Honorable,
The United States National Waterways Commission:

Sirs:—

Under the instructions of the Board of Directors of the American Institute of Electrical Engineers, its Public Policy Committee, with which have been associated Advisory Members who are experts on the development and electrical transmission of water powers, has the honor to respond to your invitation to attend the public hearing set for November 21, at Washington, and to put at the disposal of the Commission its services as experts in any electrical engineering or closely allied questions the Commission may refer to it.

The function of the American Institute of Electrical Engineers is scientific and professional, and is not commercial; consequently, its committee refrains from expressing itself on the commercial, industrial, legal or political aspects of the water power situation, except that these are incidental to the effect of that situation upon the practice of electrical engineering which it is the Society's object to promote. It appreciates also that the Commission is probably desirous not of the views of particular individuals, which might represent only individual opinions, but would be glad to have before it such opinions as are shared by a group of experts and may, therefore, be regarded as representative and out of the field of controversy. It has, therefore, prepared a statement of such opinions on a number of electrical engineering and closely allied questions related to the development of water powers.

In anticipation of the raising of some or all of these questions by members of the Commission, it respectfully submits this statement embodying its joint opinions for the Commission's consideration. It would call attention to the fact that prominent electrical engineers have for a number of years been contributing to the Transactions of the

American Institute of Electrical Engineers papers bearing on all phases of the water power question, and that the subject is one of vital interest to the American Institute of Electrical Engineers because the whole character of water power development has been changed from that of a local enterprise to that of a great public service utility by means which electrical engineers have provided, and the utility and development of water power depends almost entirely upon the fact that it may be transformed into electric power.

Relation of Water Power to Navigation.

That the utilization of rivers and smaller streams for navigation and for the development of power are naturally inter-related is obvious. As regards by far the greater part of our undeveloped water powers on the public domain, the ultimate value as sources of power of those streams is vastly greater than any possible value which could be realized by attempts to utilize them as channels for navigation, but in the case of many of our larger rivers the possibilities of development for purposes of navigation predominate as compared with power development. The committee recognizes the fact that in all cases where practical possibilities of both navigation and power development exist the two objects in view are co-operative and not antagonistic—the construction of the dams and locks necessary to secure navigability affording a natural and generally effective means of developing the power of the streams.

Water Power a Public Utility.

Modern water power developments usually are not local private enterprises, as is generally supposed. The developments in recent years in the electrical transmission of power have made possible the distribution of electric power from a single water power plant over territories embracing in some cases over 40,000 square miles in area, supplying electric power for diversified purposes to hundreds of thousands of people. Such distribution of water power is an advantage to the consumers, and any policy tending to retard or handicap the development of water powers is a disadvantage to the people in the surrounding territory and retards its industrial development.

The regulation of public utilities by public service commissions has become practically an accepted principle in the United States, and there is no reason why safeguard from unfair charges for water power should not be found by this means, especially where the wide area covered by electrical distribution makes the public nature of a water power obvious.

Distribution of Investment in Hydroelectric Systems.

The investment of capital in hydro-electric systems is not confined to the dam and power house. In general, not over fifty per cent of the investment is represented in the generating plant, the balance representing the cost of the transmission lines radiating from the plant, the substations at the ends of the transmission lines for the conversion and distribution of the transmitted power, and the secondary distribution lines delivering power from the substations to the premises of the various consumers. The distribution system outside of the power plant, while not apparent to the casual observer of a power house and dam, represents in many hydro-electric developments the greater part of the total investment.

Close Competition Between Water Power and Steam Power.

The belief among certain classes of the public that water powers yield excessive or disproportionate profits springs primarily from two causes—the conception that the water itself is the power and that the expenses of operation of a water power are small while the company's income is large.

While, certainly, the power could not be developed without the water, the water on its part can deliver no power except by means of the dam, the power house, and its appurtenances. It is difficult for the public to regard these once built as involving continuing expense, but they do. This expense is comparable in amount with the cost of coal in a steam station, and is the return due to the capital invested. It takes the form of interest, sinking fund expenditures, depreciation and taxes. The invested capital in a water power is so much greater than the public realizes that with interest charges at not more than five or six per cent, in a majority of cases, from seventy to eighty per cent of a water power company's income is absorbed.

This return to capital is not profit. Without the prospect of it, capital cannot be secured.

Of a water power once built and after its expected market has been developed, the operating expenses, exclusive of the returns to capital, are seen by the public to be small, which they are, in a majority of cases, absorbing only from fifteen to twenty per cent of a company's income. The remainder, however, that is left for profit after capital and operating charges are paid is usually not large and certainly not excessive, especially when there is always risk of damage from floods, lightning, failure of expected market to develop, and such uncertainties of operation as the art of electrical engineering has not yet been able completely to remove.

Practically all water powers come to birth or not on the answer to the question "What is steam power in the territory costing?" and they only live when they deliver power at a substantially lower cost. At the same cost they remain unborn.

Besides the cost of power, the relative amount of investment is a determining factor. While at present a steam electric plant can be built for $75 per horse power, the cost of a hydro-electric plant varies from two to four times that amount. Part of this difference is because the steam plant can be built near the center of its market, while the water power is almost invariably at a distance.

With the capital required for a water power so much greater, the tendency is to build a steam plant, even if the power it delivers is not as cheap as that of a water power. If it can be shown that water power can be delivered for, say, $25 per horse power per year, but that steam power can be produced for, say, $27, the water power plant will not be built, and the steam power will. If, however, the water power could be delivered for $24, the difference might turn the tide in favor of the hydro-electric investment.

It is because of the great effect of slight differences in the cost of water power upon the determination of the question "shall water or steam power be developed in a given community?" that even light burdens in the form of taxation, charges for sinking fund to wipe out the investment at the end of a limited period, or limitations as to tenure even though

not immediately onerous, loom so large in settling it.

Attention is often called to the increasing cost of coal with an implication that the cost of steam power will rise, permitting hydro-electric companies to raise their rates and exact undue profits. The implication is not correct. It is true that the cost of coal is rising, but it is also true that steam engines and boilers are constantly being improved in efficiency, and that the art of producing power from steam is progressing at a rate so much more rapid than that at which the price of coal is rising that the cost of steam power is continually falling. Should a limit to this fall be reached, which is not yet in sight, gas and oil engines are making such constant reductions in the cost of power that there is no probability that water powers will be free from the controlling competition of other kinds of prime movers. It is safe to say that extortionate rates in water power are highly improbable even if the principle of rate regulation by commission were not applicable to hydro-electric companies.

Construction Risk in Hydroelectric Development.

While hydro-electric engineering is tending toward more standard methods of construction, each individual development will present new problems in engineering with the inevitable construction risk connected therewith. During construction the works are constantly subject to serious damage by abnormal floods, and unexpected difficulties and physical conditions may arise whereby the cost of construction may be very materially increased beyond original expectations. Furthermore, after the power plant itself is satisfactorily completed, the success of the enterprise is commonly dependent upon the industrial development of a large territory surrounding the power plant upon which it relies for its market for power. Such industrial growth can only be predicted on general principles, and may be subject to unexpected retardation due to industrial depression or other unforeseen causes. Again, unexpected competition may develop from new and improved steam and other engines, all of which limit or defer the profits of the enterprise. On account of these engineering and operating risks and uncertainties, capital which is invested in hydro-electric enterprises is entitled to reward commensurate with the risk.

Revocable or Limited Term Permit.

The revocable permit for the construction of a hydro-electric system does not attract capital because of the obvious uncertainties involved. In case of revocation, not only would the power plant and dam be forfeited, but all of the transmission lines, substations, and distribution system dependent thereon for their operation jeopardized. Not only is it difficult to induce capital to invest in such a development based upon a revocable permit, but it is very difficult to close the long term power contracts with consumers which are necessary to make a hydro-electric system financially successful. Consumers are unwilling to make their future business requiring power dependent upon a permit which might cause at any time the complete disorganization of the system supplying their power.

A limited term franchise also involves financial and engineering difficulties which seriously impede the normal development of a progressive hydro-electric system. Such systems are laid out

from their inception for ultimate growth, and in this respect are comparable to large railway systems. The transmission lines are constantly reaching out into new territory in order to meet new demands and with the development of the art it is necessary to make investments in extensions in order to maintain satisfactory service and to meet the demands of power consumers.

With a limited definite term beyond which renewal of rights are uncertain, no company would be willing to continue indefinitely the extension and improvement of a system so necessary and desirable from the standpoint of public service. The necessity of writing off not only the original cost of the plant, but the continual annual investment in additions thereto within the limited term of the permit requires an annual sinking fund that adds materially to the cost of the water power. This is a hardship, not only upon the power company, but upon the consumer.

Before the end of such limited permit development of the system would cease, maintenance expenses would be cut to a minimum and the plant would deteriorate to a point where the service to the public would become unsatisfactory.

Interconnection of Contiguous Hydroelectric Systems.

It has been suggested that with the growth in extent of large hydro-electric distributing systems ultimate interconnection and combinations between them might establish a monopoly and permit the raising of prices for power.

Such interconnection between contiguous hydro-electric systems offers decided and important engineering advantages. It improves the constancy of electrical pressure and enables the system to draw power from two or more independent power plants.

The rainfall occurring at different times on two or more separate watersheds are thus made to benefit all of the consumers on the combined systems.

Such interconnection also permits reduction in operating expenses and assures better service by reducing to a minimum the probability of total interruptions at any time from line troubles or otherwise.

The investment and consequently the cost of power can be reduced by combination because less capacity in generating machinery to serve as spare plant for emergencies need be installed, and operating expenses can be reduced by rendering repairs easier, owing to greater facilities for shutting down for work or for inspection. Any tendency towards raising the price of power as an accompaniment of such combination is restrained automatically by competition with steam power, and can be regulated by government commission.

Extent of Water Power Development.

The statistics of water power collected under the direction of Congress several years ago and embodied in the Report of the National Conservation Commission of 1909, show that there is at present developed in the United States about five million horse power of water power.

The amount of power produced by steam from coal is difficult to estimate, but is considered to be about twenty-seven million horse power, and is rapidly increasing with attendant depletion of coal reserves. A large part of this it is not only possible but easy for water power to replace if it were made freely available through de-

velopment. Within range of development at a cost of investment that would make the cost of such power about equal to that of steam power, there is still undeveloped in the streams of the United States about thirty-five million horse power.

Any action by Congress that would accelerate the release of this power would conserve enormous supplies of coal for such domestic and industrial purposes as only coal can supply.

Conclusion.

We regard it beyond our province to urge upon the Commission specific measures or to discuss, other than incidentally, phases of the water power question not involving electrical engineering. What we have given are, in our opinion, engineering and economic facts on which the Commission may rely.

HENRY G. STOTT,
Chairman.

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In discussions which have occurred at various hearings and conferences on water power which this committee has attended, certain aspects of the situation have assumed greater prominence than others, and in the light of the committee's experience subsequent to the presentation of the original statement above given, it is appropriate at this time to call particular attention to certain additional economic facts that have been brought out.

The state needs the water power development for its material upbuilding; the nation desires conservation, and the only available sources of capital for development are private sources.

The principles which must be kept in view if private capital is to be attracted are:

First, *stability;* legislation should be specific; it should be uniform for all water power development, whether on the public domain or on navigable streams; it should establish a permanent policy, not subject to radical administrative or legislative changes; it should insure, for all time, permanent operation by a responsible operating agency.

Second, *security;* when invested in a business, involving construction and commercial risks capital should not only be permitted to earn a fair and generous return, but its repayment must be assured. Capital cannot be driven into unproductive, unsafe or possibly confiscatory undertakings by legislative action or duress; there must also be security to the consumer who in good faith often makes large expenditures for the utilization of electric power dependent upon expected stability.

Third, *fairness and good faith between the sovereign* (whether state or nation) *and the grantee;* to prevent oppressive monopoly, restrictions as to rates or service, when imposed at the hands of only one legislative power, are wise; the imposing of restrictions not based in the highest degree on fairness and mutual good faith is unwise and tends to prevent development.

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It would be difficult to lay too strong emphasis on the fact that the market price of hydro-electric power must be materially lower than the

market price of power produced by steam. Many water powers, because of remoteness from market or because of high development costs, or because of the large investment in transmission lines, cannot now compete with steam-generated power, and the sole usefulness of these powers lies in their possible value for local electro-chemical or electro-metallurgical industrial enterprises. This is especially true of the Pacific coast and western states powers, even when the relatively high price of fuel in some of those states is considered.

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One of the apparent popular misconceptions is that, owing to a diminishing coal supply, the cost of steam power is steadily rising. The fact is exactly the reverse. A steam-driven electric plant which fifteen years ago would have cost to install say $90 per horse power of capacity, can today be installed for less than half of that sum. Fifteen years ago three pounds of coal were required to produce each horse power each hour.

Plants constructed today will produce the same power from one and one-half pounds of coal. The markedly smaller necessary investment, and consequently smaller annual fixed charges, representing interest, together with the great reduction in fuel now required, goes much further than offsetting the rising price of coal. Furthermore, there is nothing to indicate that the limit to the reduction in the cost of steam power has been reached or is in sight, inasmuch as the very best type of steam electrical plants today does not utilize twenty per cent of the total energy in the coal.

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As time passes and the cost of steam power falls the total water power of the country susceptible of profitable commercial development continually shrinks, and many water powers which a few years ago could have successfully competed with steam and might have been developed if unhampered by burdensome restrictions cannot be developed today because the falling cost of steam has compelled the marking down of the possible selling price of the product of the water plant to an unprofitable point.

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These facts are extremely instructive because, since the cost of steam power continues to gall, the longer suitable legislation is deferred the greater will be the shrinkage in the total water power which may be developed in the nation, to say nothing of acceleration of the ultimate exhaustion of the coal and oil fields.

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Intelligently and broadly considered, hydro-electrical development once made must be classified as "a system of electric service" made up of combined steam, electric and hydro-electric generating plants, feeding into a network of interconnected transmission lines covering wide areas and rendering a service as important in utility and value as the nation's water and rail transportation systems; its communication systems of telegraphs and telephones, its urban and interurban railways, all of them great

public utilities, performing a definite service of great value.

They are indeed even more, for they are great national necessities, expanding as the nation grows, and at the hands of some agency of operation, federal, state or corporate, designed to serve, for all time, the varied needs and increasing demands of the nation.

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This system of electric service thus becomes the foundation for many enterprises built because of it and dependent for their existence upon its continuity.

Old communities, cities, sections —whole states—expand, and new centers of activity are built because of it.

The development of cheap electric power at Niagara Falls afforded opportunity and incentive, resulting in the development of processes in the field of industrial chemistry and metallurgy which now use many hundreds of thousands of horse power formerly wasted, and which have contributed in many ways to materially advance the industrial arts. Many of the nation's unused water powers can, when developed, as effectively serve industry as Niagara has done and is doing.

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A foundation for this service must be laid on the solid ground of permanence. No one desires or expects that electric service of a responsible public utility or of a beneficial electrical industry should purposely be discontinued. The agency of operation may of course change, but, at the hands of some agency, service must be had, and while this is generally recognized, one of the most widely discussed legislative questions is that relating to the proper tenure to be allowed.

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Use in perpetuity need not imply rights in perpetuity; the former is essential to the nation's advancement—the latter is against public policy. Present day discussion does not, apparently, discriminate, so that recent bills propose only a tenure for a certain period of years, at the end of which time all rights shall cease and terminate, leaving the future of an enterprise in grave doubt, both as to property rights and as to future operation.

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This particular point is so well covered in the statement submitted to the National Waterways Commission under the title "Revocable or Limited Term Permit" that we need only emphasize here our approval of an indeterminate grant.

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A review of the history of successful existing power systems discloses the continuous and frequently very rapid extension made by them. During a term of say fifty years, it would be very conservative to expect a successful enterprise to multiply its generating capacity four or five times—and it might readily do so ten or twenty times, provided the capital necessary for the additional water power development needed by the community can be secured upon reasonable terms.

While the original grant may be for a comparatively small power development, relying upon rights over

but a small amount of government land, the natural growth of the development often sees the enterprise expanded into a large and complicated system of plants, with connections and ramifications into many counties, and often into several states. For such an enlarged system to be subject as a whole to the right of recapture by the government, derived from the use of a small amount of government land in the original grant, is to rest a great economic structure upon an insecure and uncertain economic foundation; and the dependence thus of the fortunes of the whole project upon the fortunes of the small original element is an effective bar to that confidence in a hydro-electric property which on the one hand enables it to attract additional capital for its growth, and on the other leads consumers to base their plans and local investments upon the hydro-electric property's stability.

A properly safeguarded indeterminate grant is logically demanded from the standpoint of both the public and corporate interest, as being in accordance with sound public policy.

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A water power commercially capable of development under favorable laws involves, if undeveloped, a serious and constant loss to the community it might serve as well as to the nation.

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The loss is not alone to the capital seeking profitable investment; it is perhaps twenty times greater to the community itself, through retarded growth and lessened industrial activities. Capital can seek other fields for employment; the community's loss is absolute.

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Return to capital in the form of interest and sinking fund to repay original investment is not profit. This must be set aside in advance of all profit, and represents what may be regarded as rental paid for the use of money, for which the value of the whole enterprise must be pledged as security. After interest and sinking fund requirements have been provided for, there must be profits in prospect, to reward the initiative and skill of the projectors of the enterprise; and unless the total of interest, sinking fund payments and the profit is in the neighborhood of fifteen per cent, experience conclusively proves that capital will not consent to investment, and development is consequently indefinitely postponed.

THE COMMITTEE ON THE DEVELOPMENT OF WATER POWERS OF THE AMERICAN INSTITUTE OF ELECTRICAL ENGINEERS.

CALVERT TOWNLEY, *Chairman.*	H. A. LARDNER,
H. W. BUCK,	H. G. STOTT,
GANO DUNN,	JOHN H. FINNEY,
	L. B. STILLWELL.

MR. FINNEY: I will also read the names of the members of the Public Policy Committee of the Institute. They are, besides Henry G. Stott, Chairman, H. W. Buck, John J. Carty, Gano Dunn, John H. Finney, Charles W. Stone, Calvert Townley, and James G. White. The advisory members of the Public Policy Committee are Edward D. Adams, Philip P. Barton, Louis Bell, Dugald C. Jackson, William S. Lee,

Lewis B. Stillwell and Percy H. Thomas.

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At the San Francisco meeting of this great engineering Congress one of the speakers is going to say this:

> The appreciation of low cost of power is relative, only; relative, in the first place, to our ideas of absolute cost of commercial power as produced, possibly, by the steam engine, and secondly, when cost of power as a major factor in production is lower than the critical power cost and at which manufacture becomes commercially feasible. We are apt to think of low cost of power as something tangible and absolute. Under certain conditions, steam power at $100.00 per horse power per year is low cost power, and under certain conditions, power at $6.00 per horse power per year is high cost power; $6.00 power may show a loss in an extensive electro-chemical plant, while $5.00 power may show an attractive profit.

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If you will bear with me just a moment, or for a few minutes, I should like to say a few words to you in my individual capacity. I have been for many years keenly interested in water power development. I have made, as an engineer, study of many problems that surround it. The company with which I am identified is perhaps the largest user of water power in the United States, if not in the world and I would just like to put some of my individual views before you on this matter.

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THE CHAIRMAN: Proceed, Mr. Finney.

VOICES: Go ahead.

ADDRESS BY JOHN H. FINNEY, OF WASHINGTON, D. C.

American Institute of Electrical Engineers.

MR. FINNEY: Mr. Chairman, If I came to Oregon with a proposal to establish in the state an industrial enterprise requiring one hundred thousand horse power in electrical power and should proceed to invest in a steam generating plant five million of the ten million dollars required for the enterprise, and this steam plant should annually burn up from seven hundred thousand to a million tons of irreplacable coal, I would be welcomed with open arms in Oregon, or in any other state in the Union!

I could obtain from Oregon, or any other state, a charter permitting any legitimate industrial activities or public service functions; could build and own permanent industrial plants and appurtenant cities; could own outright rights of way on which to erect transmission lines supplying power to communities; or, serving irrigation works or electrified steam railroads, could manufacture electrochemical and other electrical products, and do all these things legitimately, honestly, and to the material benefit of the state and nation, and, if coal were available that long, *to the end of time.*

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I would be a desirable and much sought after citizen, *if I burnt a million tons of the nation's irreplacable coal*—but let me try to establish at an even higher capital cost the identical enterprise and propose to use water power instead of steam, and, if I am compelled to use a square foot of area of the public domain, or the waters of a navigable stream, under present conditions, *in no state in the Union* can it be done! The same identical enterprise becomes at once "an undesirable one," to put it mildly, and the nation's splendid water powers continue their uninterrupted, wasteful flow to the sea! (Applause.)

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Why this piece of stupendous folly?

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It may aid this Conference in finding an answer to this question and help to solve the problem, if we consider briefly the important and interesting phases of the water power situation which deal with the legislative status of, and departmental attitude toward, water power, as it appears to an engineer observer at the seat of government.

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A review of attempts to remedy present defects of or shortcomings in existing laws—such as the attempt to pass the Ferris Bill, now

dead (Applause.)—is too long a story to recite in detail, and as all water power legislation must start de novo at the forthcoming session of Congress, the Ferris Bill is chiefly valuable as indicating the views of departmental chiefs and their subordinates, towards this large question.

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It is my opinion that there is a very sincere desire on the part of the present administration to work out some definite legislation for the development of power, both on navigable streams under a new general dam act, as well as for power located on streams in the public domain and in national forests. It is believed that this desire will be reflected in new bills to be presented at the next session, and, as the Ferris Bill passed the last House and has the backing of the Interior Department, it is likely that it will again be introduced and urged for passage, as will perhaps also be the case with the Adamson Bill.

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Some of the factors which serve to make the water power problem a seemingly complex one are:

First: That the control or supervision of water power now rests in three separate and distinct departments of the Government, two of which, Interior and Agriculture, cannot act, except under antiquated and inadequate laws passed before transmitted energy was thought of, and now departmentally "stretched" to cover hydro-electric development. The War Department cannot act even under the fairly satisfactory General Dam Act, because under it Congress must first authorize all projects on navigable streams and for some years has declined this authorization, while engaged in a free-for-all fight over what a new general dam act should contain, as shown by the Adamson Bill.

Second: That hydro-electric development is, comparatively speaking, a new art and as a transmitted commodity is creating new economic problems.

Third: That the "conservation of natural resources" propaganda, through skillful manipulation and wide publicity, has for some years created wholly erroneous ideas as to the profit from, value of, and so-called monopolistic control of, water power, and has practically succeeded in putting hydro-electric developers into the "malefactors of great wealth" class. (Applause.)

Fourth: There are in Congress, and always will be, men of many minds, radicals, conservatives, standpatters, progressives—call them what you will. The clash of views on so technical a subject has prevented in the past broad treatment of this water power problem, and doubtless will continue to prevent development of all projects requiring congressional consent (as unfortunately most of them do) if specific congressional action is required in each case.

Fifth: Administrations change, and secretaries come and go, but governmental bureaus charged with the administration of laws go on forever, and, quite naturally perhaps there has grown up in some of these bureaus a radical change

from trusteeship toward the nation's resources to what now amounts to sovereignty over, which idea, more firmly entrenching itself year by year, and using conservation as an effective weapon, now seriously holds that the state cannot be trusted to itself administer its waters, its forests, its coal, and other resources, and *that no law dealing with these resources still under federal control which does not give to the Federal Government the power to dictate the methods of working; control as to rates and as to charges, restrictions, and financing it may impose or may delegate to a secretary to impose; and as to the life of the enterprise*, should be enacted.

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This is evidenced in many ways, but in no way more strikingly than that shown in various hearings on water power honored as they have been by "ex-secretaries" and other "ex-officials" in abundance, as well as by present incumbents of these offices, all pointing out the (to them) "absolute necessity" for national control and safeguarding of the "nation's heritage," and obviously influencing the sort of legislation reflected by the Ferris and other similar bills. (Applause.)

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What can be done in these circumstances to bring about a better understanding of the state's needs for water power development, and of the underlying principles which must govern such development?

It is not a difficult matter, if we get in mind certain essentials of fairness between the rights of oversight of the Federal Government, as guardian of navigation or as trustee or owner for the public domain and national forests, and the states as owners of the water, and between both of them and that much misunderstood word, capital. The real difficulty lies in the education of the congressional and departmental mind to a point where our usual national common sense should prevail over the species of federal socialism involved in the seriously proposed leasing system of resources of all kinds—a system, in my opinion, wholly un-American and unworkable under our system of government. (Applause.)

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I speak of fairness between the sovereigns and capital—what does capital want?

First: It seeks the opportunity to invest, ordinarily as a public utility, in an urgently needed, legitimate business in the hope and expectation of profit.

Second: It requires conditions that will make for stability of the investment and of the enterprise for all time, or until such time as the property becomes necessary for some public use.

Third: It requires assurance of repayment in full for capital expenditures used in the upbuilding of the property if and when the state or nation should exercise its rights to purchase it for a more beneficial use.

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What does the state want?

First: It wants development so that the state's activities can be furthered.

Second: It wants electric service

at the lowest price that conditions justify, but it wants service first, and through the regulation of rates at the hands of its public utility commission to prevent oppressive monopoly. Low price power is a relative term.

Third: It wants reliability and continuity of efficient service, capable of indefinite expansion at the hands of a well-organized and financially-responsible agency.

Fourth: It may want the possible right of recapture for some public use at the end of some definite period.

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What the federal authorities say they want, if you can pin them down to a definite thing, is seemingly accomplished when the states have properly safeguarded their rights, except of course that the federal authorities should, in addition, receive for lands actually used, some return either in the form of cash for a fee simple title, or a rental based on a fair price for the property.

The Federal Government has now and has always had, the undoubted right of recapture under the common law, and can acquire any private property anywhere for a public use, by simple methods of condemnation and payment.

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Unless it is the intent of the Federal Government or the states to engage in the general business of hydro-electric supply as a part of a federal or state socialism, under some new constitutional authority not yet granted, acquisition and operation of these hydro-electric developments and their appurtenant properties and facilities for service, is extremely remote.

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As has been noted, we have, in this matter of water power, not only Congress, but we have as well three departments with which to deal—War, as respects navigable streams; Interior, as respects the public domain; Agriculture, as respects national forests; all realizing the necessity for development, but all looking on the matter, at the present time, from different angles and with radically differing views of treatment for what is, in its final analysis, one great subject, requiring and needing one treatment.

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Why does not a solution lie in the following remedy?

First: The creation by Congress of a water-power commission, composed of the three secretaries, empowered to grant without further congressional action, water-power permits covering the use of navigable streams, public lands, or national forests, *when not inconsistent with the public interests* to, and only to,

Second: Corporations, associations or individuals organized for beneficial purposes under a charter granted by the state in which the proposed development lies.

Third: The aforesaid state charter to contain specific provisions as to use; as to oversight of financing; as to regulation of rates and charges at the hands of a state commission; as to the rights of recapture by the state for a public use on a fair and equitable basis at the end of an

agreed period, whether that be fifty years or more; as to the rights of the grantee if recapture is not effected; together with such other safeguards as may be wisely bargained for between the state and its created agency of operation, in any given case.

Fourth: The federal commission thus having a responsible agency with which to deal, with its purposes named, its financial methods approved, its proper regulation assured, need then only be concerned to impose the minor restrictions which the general public interest demand; these are,

(a) The obtaining of a fair value of, or fair rental on, any government lands which the enterprise may require.

(b) Safeguards as to navigation, such as locks, storage of water, etc., on navigable streams.

(c) Supervision or approval of plans for proposed structures, dams, etc., as to the safety thereof, and

(d) The possible supervision or regulation of rates or reservation to regulate, when the project is engaged in Interstate Commerce.

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Does not the future of hydro-electric development on the large scale demanded by the nation's needs and never more urgently than now lie in some such simple legislation as is thus proposed—is not this plan a fair one to which all interests can subscribe?

I believe that through this Conference it will be possible to bring some such common sense and understandable business principles based on fairness and honesty to a solution of this great question, than which no other is more important to the industrial advancement of the nation, and thus put an end to the present national folly which, talking "Conservation," is daily submitting to a loss in non-replenishable and rapidly diminishing fuel; in products of industry unmanufactured, and in crops not grown; in the retarding of the states' development that, so vast are the figures, cannot be measured in comprehensible terms! (Applause.)

Congressman Julius Kahn of California, having arrived at the Conference, upon motion of Delegate S. B. Huston of Oregon, the courtesies and privileges of the floor were extended to him under the rules.

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The Chairman announced that he had received a telegram and directed the Secretary to read same, and same was read. The telegram is as follows:

San Francisco, Cal., Sept. 22, 1915.

Governor William Spry,
Chairman Portland Water Power Conference, Multnomah Hotel, Portland, Oregon:

The following resolution passed by Americal Mining Congress:

"*Whereas*, more than half the area of the United States west of the Missouri River is held by the United States, not as a sovereign, but as a proprietary trust for the people, and—

"*Whereas*, the right of eminent domain through which large public utilities are enabled to secure rights of way for the construction and development of such utilities as are of public benefit was early

recognized by the Government of the United States as being necessary to Western development, and rights of way over the public domain were granted, subject to such supervisory control by the Department of the Interior as would protect the interests of the public and the rights of other easements, and—

"*Whereas*, during recent years the approval of such rights of way by the Department of the Interior has been frequently questioned and many large enterprises of immense importance in the development of Western enterprise have been prosecuted by the Federal Government with a view to the cancellation of rights of way upon which such developments have been predicated, and—

"*Whereas*, there would seem to be no reason why proprietary title of the Federal Government should be held more sacred than the rights of private individuals, *therefore be it*—

"*Resolved* by the American Mining Congress, in Eighteenth Annual Convention assembled, that this Congress hereby makes protest against the restrictions which have harassed enterprises already undertaken and have prevented the undertaking of many other enterprises looking to a higher development of other Western resources; *be it further*—

"*Resolved*, that we protest against the enactment into laws of the principles embodied in the so-called leasing and power bills considered by the last session of Congress of the United States and again urge that the policy of Lincoln, that the public lands are a National Public Possession held in trust for the maturing states under which the magnificent industrial progress of the West has been made, shall not be radically changed in opposition to the wishes of the Western pioneers who have made this development possible."

J. F. CALLBREATH,
Secretary.

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The Chairman announced that the next speaker on the program, Senator Clark of Wyoming, had arrived at the Conference, but had requested not to be asked to address the Conference until the following morning. There being no objection, the request was granted.

The Chairman announced that Senator W. E. Borah of Idaho, the next speaker listed on the program, was unable to be present.

WHY FINANCING POWER DEVELOPMENT IS NOT PRACTICABLE WHERE GOVERNMENT LAND IS INVOLVED.

Address by S. Z. Mitchell, President, Electric Bond & Share Co., New York City.

THE CHAIRMAN: Mr. S. Z. Mitchell, who has been invited to make an address before this convention on "Why Financing Power Development is not Practicable where Government Land is Involved," will now make an address. (Applause.)

I have the pleasure, gentlemen, of introducing Mr. Mitchell, of New York City. (Applause.)

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MR. MITCHELL: The Governor of Oregon has asked me to explain from a practical standpoint why it is so difficult to raise money for water-power development where any government land is involved. I am complying with that request after much hesitation, because the task is unpleasant. Its performance is impossible without the use of plain speech.

There is always the danger that so much frankness as is necessary in this case may be misunderstood and be considered personally offensive. Therefore, I urge you to bear in mind that I have the highest respect for all the officials of our government, and especially those who administer the water-power matters on the public lands.

My remarks are in no sense personal. They apply not to men but to a system—a system that gives to a few men enormous arbitrary powers.

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There is always an irresistible temptation for all men to acquire and exercise authority in an ever-increasing degree. It is not difficult to persuade any official that his judgment can always be trusted and should, therefore, be final. All men are subject to this influence, and I confess that were I placed in a position of discretionary authority equivalent to that which has been exercised by our federal officers who administer the water-power affairs of the nation, I should probably fall as ready a victim to the temptation as has anyone else.

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From the investors' standpoint, the matter which we are discussing here today is in no wise partisan or sectional. The average investor does not care whether the jurisdiction over his investment is exercised by the federal government or the state government, so long as there is only one sovereign power in control.

I may say further that among the clients whose money, in considerable amount, I have been instrumental in placing in the West during the past ten years are a large number of foreign investors—from

England, France, Germany, Belgium, Holland, and even a few from Austria.

Those people, as a rule, know nothing about the controversy relative to sovereign control which we have discussed here today.

As a matter of fact, they care little or nothing about it. They insist on knowing—first, that their investment is safe; and, second, that they will get a fair return on it.

It is true that a large number of foreign investors have sold their securities to our own people in the United States since the advent of the European war, but a very large amount is still held abroad.

It will be surprising if we do not continue to have foreign money in considerable amount coming into this country.

Taxes are so high over there now, and will probably be so much higher when the war is over, that there will be a considerable tendency among those possessed of money to send it to this country so as to avoid the enormous taxation that it will have to bear in Europe.

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With reference to the matter of federal tax — so-called — that was discussed here today, it was stated by one of the speakers that Mr. John D. Ryan, President of the Montana Power Company, testified before the Public Land Committee of the United States Senate, during the hearings on the Ferris Bill, that the payment of a federal tax is not vital to the investors in water-power securities so long as that tax can be passed on to the consumer.

That is a correct statement of the view taken by investors generally. So long as the additional burden of a federal tax does not too greatly curtail the use of electric power or, in special cases, prevent industrial development, the matter is entirely political in all its aspects.

If the law-makers of the nation find it wise to impose a federal tax on water-power development, and thereby increase the consumers' rate, or defer reductions in the rates, or force the use of steam in lieu of water power, the adjustment of the matter to the satisfaction of the consumer is a question which those consumers and their representatives in Congress and the state governments affected must thresh out among themselves.

This is not an investors' quarrel as to future developments. No one can be compelled to put further money in government land water powers. (Applause.)

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The difficulty with Western water-power development today is not lack of money, but lack of confidence in the measure of protection afforded to water-power investments under present federal laws and departmental regulations.

Money stands ready and willing to be invested in large amounts if only there could be assurance that the principal would be safe and that there would be accorded a fair and honorable chance of reasonable profit. (Applause.)

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Money is quick to scent an unfriendly or dangerous atmosphere.

As water flows to the lowest place,

so does money flow to the fairest and safest place.

Safety and marketability are more important than yield.

Millions of dollars are now seeking safe employment, and the supply greatly exceeds the demand.

Though this money can be procured cheaply, under conditions of safe investment, Western rates for money are high, and sufficient funds for large new enterprises—especially in the water power line—are almost unobtainable.

If the millions of idle money remain in the East, how is it going to benefit the West?

It cannot be said that the West is unwilling to let the Eastern man make a fair profit on the development money that he brings here.

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The West has always stood for a fair deal. It expects the investor to make a profit commensurate with the risk.

The people of the West are not afraid anyone will make too much profit in the water power business. The public service commissions will take care of that.

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The people of the West need more money. It is not obtainable. The fault is not theirs. The difficulty lies in the fact that water-power investments where government lands are involved do not receive the fair and uniform protection of the law as they do on private land, and in this connection we must not forget that more than sixty per cent of the area of these Western States is still government land. (Applause.)

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The general public does not understand why water-power development in the public-land states is practically stagnant. The people of the West have naturally, and I believe correctly, assumed that the laws passed by Congress bearing on this subject were intended to promote the development of water powers.

In like manner people have a right to assume that where acts of Congress have left many things to the Departments to be embodied in general rules and regulations, that all such rules and regulations would be framed so as to encourage rather than hinder and delay the greatest possible conservation of water powers. (Applause.)

For seven years everybody has been preaching conservation, but in the water power field the reverse of conservation has been practiced. Everyone who thinks at all knows that the only way to conserve water power is to use it, and that the way to conserve coal, gas, oil and wood fuel is not to use them wherever it is possible to substitute water power in their stead.

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When I joined with others to develop Western water powers in 1886, tenure in the public lands was secured under the right-of-way act of 1866 and the supplementary act of 1870. Everyone felt that such titles, acquired for the beneficial use of water, were absolutely safe and dependable.

Subsequently other acts were

passed, and at the time of their passage were supposed to be an enlargement of these acts in furtherance of the spirit and principle of a true development policy; *i. e.*, to encourage and to give protection to all honest and diligent developments of power, pending the completion of the plants and the putting of the water to actual beneficial use, and until the permit rights could become vested in accordance with the laws and customs of the Western states; and to exclude mere speculators who would secure titles to the land, not for purposes of development but for the realization of an unearned increment.

The right to use the water under Western customs and laws for purposes declared by the several state legislatures to be public and beneficial, has always been determined by the actual use of the water rather than by the ownership of the lands.

Chief Justice White (in Gutierres vs. Albuquerque Land Company, 188 U. S., 545) has aptly said, "beneficial use shall be the basis, the measure and the limit of the right."

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It was with the knowledge of these Western customs and decisions of the courts, and of the contemporaneous interpretation of these laws by the Departments in Washington, that large amounts of capital were invested in power enterprises by people of courage and pioneering instincts. These early investors regarded their tenures as safe, and properly expected an ultimate return upon their capital in proportion to the risks incurred.

I know of many cases in which they were actuated more by a laudable desire to do something constructive; to civilize the wilderness; to reclaim the deserts; to open the mines, and to establish industries that would utilize to the utmost the unlimited raw material and to irrigate the lands of the West. (Applause.)

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I want to emphasize the further fact that a great many people have put their money into these enterprises largely under the conviction that because they were dealing with the government they could surely expect fair and righteous treatment.

They relied on the early and contemporaneous interpretation of the laws as expounded by the courts and as interpreted to them by their counsel.

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It is only within the last few years that the government has changed the order of things, has revoked permits, and has attacked titles, by starting ejectment suits against some of these power companies, and all because these companies could not willingly submit to frequent changes and more and more onerous burdens. The investors, the bankers, and others, who have had any financial relation to these Western water power projects involving government land, feel strongly that the continued imposition of more uncertainties and new and more onerous burdens and restrictions, is in no wise necessary in the public interest, but merely makes it more difficult to finance, maintain and operate on a paying basis the water power plants that have been erected

on the public domain. The whole matter has come into the limelight through litigation in the United States Courts, and today I think it is very generally known throughout the Union just what the financial dangers are.

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In England the "Corrupt Practices Act" requires the dealers to make full disclosures in their circulars and representations of all important facts. If they fail they go to jail.

Nearly all the American water power properties are upon private land. In a few instances a comparatively small portion of the property is on government land, under revocable permit, but what we are trying to do is to bring about the use of the water powers depending largely or wholly upon government land.

Now, as to these, if, under revocable permit and the facts are stated, as required by the British law, what prudent investor, knowing all the facts, will risk his money on such precarious tenures? (Applause.)

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There is a well-established principle in the construction of judicial matters, that in case of doubt or dispute concerning the meaning of a law many years after its enactment, the correct construction may be ascertained by going back to the time of passage, when the circumstances were fresh in the minds of the public and of their representatives, and finding out what construction was then put upon it.

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It has been stated that in the case of federal laws concerning rights of way for Western water powers, the construction now being placed on these laws by the Departments is largely at variance with the contemporaneous construction placed thereon before the people had invested large amounts of money in development wholly or partially on public lands.

It has been stated that these changes in departmental interpretation date back to an opinion rendered by Attorney General Moody, concurred in later by Attorney General Bonaparte, along about 1907, to the effect that whenever any act of Congress leaves to the discretion of a government official the power to do or not to do a given thing, the official is legally justified in exacting such conditions as he thinks wise as a condition precedent to the doing or the refusal to do the thing in question.

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Without presuming to question the correctness of this official opinion, I can say that it and the subsequent departmental acts based upon it have been very disturbing to investors.

Apparently the Department officials have felt that this opinion has authorized them to do, through rules and regulations, practically anything not prohibited by the act, and which they think ought to be done.

Investors feel that this is substituting the positive, non-reviewable opinion of a single appointive federal officer for the wisdom of

Congress as to details which are vital to investors.

They feel that such official acts, effectively legislative, in substitution for specific legislation by Congress, are more potent than congressional legislation itself, because the latter is reviewable, as to constitutionality at least.

How can you appeal from the decision of an appointive official, if, in the exercise of his discretion, even as to the most vital matters, he will consent to something proper enough in itself, but only if you assent to exactions not mentioned in the congressional act?

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From the date of that official opinion, departmental and bureau officials started to place an interpretation upon the right-of-way acts of Congress wholly at variance with the then established construction.

The authority to exact conditions was apparently regarded as unlimited and subject only to the discretion of the heads of the Departments. They began to exact new conditions, some burdensome and dangerous to invested capital, and to levy non-uniform charges or federal taxes.

No one can with justice complain of an official effort to secure fair treatment of the public by the grantees of the government, to provide reasonable rates and good service and to prevent unlawful corporate acts.

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The things of which capital complains are the ill-considered restrictions which accomplish nothing except the impairment of security values, the retardation of development, the prevention of improvements to service and the prevention of rate reductions, all of which mean great injury to the people generally, especially to those of the public-land states.

These restrictions and regulations are certainly not born of any practical knowledge of the power business. I do not know how to explain these practices except upon the theory that the Department people do not realize the disastrous results of their acts particularly in the matter of destroying credit.

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This new interpretation of the laws by the Departments was followed by the refusal of the Interior Department to grant applications for easements for water power purposes under the earlier acts, and the insistence upon the revocable permits under the Act of 1901.

A tax was then levied upon the water power companies based not upon the value of the land (nor of any other property which the government owned) for water power or any other purpose, but upon the kilowatt hour output of the power station.

Apparently the only limit or basis for this tax is the unlimited discretion of the secretary for the time being. This tax in itself would not be so serious if defined by law and made uniform and limited for all time as to amount, for, as has been explained, if not too burdensome it is readily passed on to the consumer; but the really serious feature of the

matter is that the tax has not been levied uniformly and apparently there is no acknowledged limit to the amount that can be levied.

I will show later that the permittees have been required to give options on their property under conditions varying in degrees of unfairness, and other conditions have been exacted which are not provided for in the acts of Congress, and which it is hard to believe were ever contemplated by Congress.

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Even under these circumstances many investors were advised by counsel that the revocable permits were intended to cover only the development period; that their real purpose was to secure prompt and orderly development, and to prevent speculators from tying up power sites on government lands; that after water was put to a beneficial use under state laws, the right to such use of water, and the rights of way necessary thereto would become permanently vested, and the functions of the revocable permit would automatically terminate.

It was further argued that the intent of Congress must of necessity have been constructive; that the Act of 1901 and the rules and regulations thereunder were in reality drawn not in derogation, but in furtherance of the development of idle resources of the West, in order that the West might become thickly populated with home builders and home owners, as in the thirteen original states.

No one ever dreamed that any just and great government would invite its citizens to promote the public convenience and comfort by devoting their life savings in venturesome developments in remote regions, in deep and inaccessible canyons, and on rugged mountains, thereby irrevocably sinking their money in concrete dams, steel pipes and other immovable structures, and then, in the absence of wrongdoing by the permittees, revoke the permits under which such investments were made.

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Especially was this true where the pioneer developers were faithfully and honestly carrying out their duties as public servants to the entire satisfaction of the communities served.

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Notwithstanding all this, about the second day of March, nineteen hundred and nine, a Secretary of the Interior, with the concurrence of a Secretary of Agriculture, revoked twenty-five permits at one stroke of the pen, under some of which permits millions of dollars of the people's hard-earned savings had been invested, with full reliance upon the good faith of the United States Government.

These revocations were made arbitrarily, and without notice, and not as the result of any complaints of the state officials or by the communities served, or by anyone else, that the companies were not serving the public efficiently and satisfactorily.

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The reason given thereafter was that the Department wished to place all permittees under a newly-

conceived set of rules and regulations, an important portion of which was a federal tax.

Many lawyers of eminence and experience have advised investors affected by these revocations that such revocations were ineffective if made after the water had been put to actual use and thus became vested under the state law; and even if the courts should not uphold this view, then, in any event, the most the federal government could lawfully do under such circumstances was to collect damages, as in a condemnation suit, for the value of the land occupied as a right of way of necessity for public use under authority of the state.

The State of Colorado has taken exactly the same position and in its sovereign capacity is officially fighting the effectiveness of some of these very revocations.

Other Western states are similarly affected, and are considering the same action in other suits involving the same questions and now pending before the Supreme Court of the United States.

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These states claim their sovereign integrity and their growth, and the public welfare, will be vitally affected by the way this question is settled. They claim that if the United States can deny them a right of way of necessity across government land for a power pipe line for a public use, it can similarly deny a right of way of necessity over such land for a pipe line to convey water for domestic and municipal use, and can also deny a right of way to the officers of a state in the enforcement of summary legal processes or for the transportation of state troops or for any other governmental purpose. The law on the subject will undoubtedly be settled at an early date by the Supreme Court of the United States.

Can you expect investors who feel they have been unjustly treated to put more money in Western developments, where the safety of title depends upon winning a lawsuit with the United States as complainant? (Applause.)

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The permit revocations which I have just mentioned illustrate the evils of placing so much arbitrary, unrestrained and non-reviewable power in any one man. Even though he be a "Saint," his judgment might be faulty.

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In order to forestall and to mitigate a storm of protests that was expected to break loose when the announcement of these revocations was made public, the order of revocation was coupled with an offer to reduce the tax provided in the new regulations where the investment had already been made, but the investors who were then committed were not at all satisfied. They did not object so much to the amount of the tax thus levied, because it was comparatively small and could be readily passed on to the consumer, but they objected most strenuously to the principle involved.

The Departments claimed the right to change or revoke these per-

mits arbitrarily at any time in their sole discretion.

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Some of the investors could not be induced to sign the new agreements.

They said, "Well, if that is true, what is the use of our signing any new revocable agreements of any kind because such agreements are unilateral? They bind us but not the government. A contractual admission of the principle involved can only serve to estop us from complaining if next week you again revoke these new permits and make the tax a hundred times greater. The arbitrary power to levy an unlimited and discriminatory tax is the power to destroy."

Viewed from any aspect, this very grave incident clearly shows the futility of trying to do anything really constructive in the public interest under the present system.

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In order that you may further understand and appreciate how the present system frightens capital and destroys credit, let me refer to a few of the other rules and regulations to which investors are required to submit by written stipulation, as a condition precedent to their being permitted to promote the development of the Western communities and to render a much needed service to the Western people.

For example, let us refer to Interior Department Regulations, approved March 1, 1913. Regulation 8, page 9, says:

No compensation will be required for the occupancy and use of Interior Department Lands under a preliminary or final power permit authorizing such occupancy and use exclusively for municipal purposes.

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The public service corporations and municipalities are equally public agents, and both equally subject to the effective regulation and control of the people of the section in which they are located, and the integrity of the investments of both are equally entitled to the protection of the laws. No act of Congress can be found authorizing departmental discrimination as between these two classes of public agents.

Is there any reason why there should be departmental discrimination in this respect?

It should be borne in mind that frequently municipal corporations are in direct competition with public service corporations, and the serious effect of the departmental special exemption of municipalities is not only the inequality of the federal tax levied upon such competing corporations, but the most seriously disturbing feature to an investor is the fact that apparently the departments are going out of their way to take sides with municipal corporations in such competitive fights with public service corporations.

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This gives such a pro-municipal and govermental ownership flavor to the water power business as to lead a great many thoughtful investors to believe that the government is unfriendly to the development of water powers by private capital. This makes money for

power developments more expensive and harder to obtain.

If the government really wishes to crush private capital initiative, and to have the water powers developed and operated only by the government itself, or by municipalities, then in all fairness why should not such policy be definitely stated in plain words which cannot be misunderstood, so that the people of the West may know to whom they must look in the future for the development of their natural resources and for their public service, and so that if the present stagnation in power development continues the responsibility may be placed where it belongs?

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Ordinarily, but not invariably, the charges are fixed for the first ten years, but subject, of course, always to the discretionary power of revocation given under the Act of Congress, but after the ten-year period, Regulation 8, page 9, states: "the Secretary may review such rates and impose such new rates per horse power per year as he may decide to be reasonable and proper, etc." The same Regulation, page 10, states: "the decision of the Secretary shall be final as to all matters of fact upon which the calculation of the capacities or compensation depends." Regulation 14 requires that "the permittee shall execute and file an agreement which, upon its approval in writing by the Secretary, shall constitute and express the conditions of the permit. Such agreement shall expressly bind the applicant to do certain things, among others (subdivision "E," page 16), "to pay annually, in advance, such amounts as may be fixed and required by the Secretary under these regulations," and (subdivision "S," page 17) further requires, "*Upon demand in writing by the Secretary, to surrender the permit to the United States or to transfer the same to such state or municipal corporation as he may designate, and to give, grant, bargain, sell, and transfer with the permit all works, equipment, structures, and property then owned or held by the permittee on lands of the United States occupied or used under the permit, and then valuable or serviceable in the generation, transmission, and distribution of power:* Provided (1) that such surrender or transfer shall be demanded only in case the United States or the transferee shall have first acquired such other works, equipment, structures, property and rights of the permittee as are dependent in whole or in essential part for their usefulness upon the continuance of the permit; (2) that such surrender or transfer shall be on condition precedent that the United States shall pay or the transferee shall first pay to the permittee the reasonable value of all such works, equipment, structures, and property to be surrendered or transferred; (3) that such reasonable value shall not include any sum for any permit, right, franchise, or property granted by any public authority in excess of the sum paid to such public authority as a purchase price therefor; and (4) that such reasonable value shall be determined by mutual agreement of the parties in interest, *and in case*

they cannot agree, then by the Secretary under a rule, which, except as modified by the requirements of this paragraph, shall be the then existing rule of valuation for power properties in condemnation proceedings in the state in which the properties to be surrendered or transferred are located."

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These permits are assignable *upon condition* that an application is filed by "the proposed transferee in the form of an agreement *binding the proposed transferee to the performance of such new and additional conditions expressed therein as the Secretary may deem necessary;* and thereupon the Secretary may, *in his discretion,* approve in writing the proposed transfer, and after such approval the transferee shall succeed to all the rights and obligations of the permittee, *subject, however, to such new and additional conditions as shall have been embodied in such agreement and so approved.*" (See Regulation 17, pages 19-20.)

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Why should any one wish to become such transferee?

Apparently his only function is to assume liabilities. (Laughter and Applause.)

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In addition to the revocable feature provided by the Act of Congress, investors strenuously object to the numerous and dangerous rules and regulations which are not only *not general, as required by the Act of Congress,* but not uniform as all laws, rules and regulations should be.

Congress did not require the Departments to force the investors to give an option on their property.

Nobody likes to give options. Options are clouds on the titles—they are liabilities.

And again, they object most emphatically, because, under the departmental rules and regulations, the decision of the Secretary is, in so many cases, made final as to most vitally important matters, and specifically binds the permittee, by written stipulation, to acquiesce, not only in such final judgment of the Secretary, but also in all such further changes and new conditions which he may see fit to impose, thus enabling the Secretary to increase the federal charges or taxes as a condition precedent to permitting an assignment or transfer of the permit in case the permittee sells his property.

This destroys marketability—the very essence of property.

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Power developers feel that the charges are made light in the beginning as a bait to get them overboard, and that when their money is once permanently invested so that they cannot remove the structures, as a merchant can remove his goods, the door is wide open for the imposition of further onerous burdens without limit at the discretion of the Secretary, with no right reserved to the developer providing for a full hearing and a judicial review or appeal.

These comments are not limited to the Rules and Regulations of the Interior Department. Read the Rules and Regulations of the Department of Agriculture dated Feb-

ruary 24th, 1913. The same plausible tenor in theory and blighting effect in practice is common to both.

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As to lack of uniformity, reference is made to the terms and conditions contained in the numerous permits now outstanding. The following will suffice as an illustration:

Department of the Interior Permit, dated March 1, 1913, granted to International Power & Manufacturing Company of Spokane, Washington (see Section 8, page 6), makes no charge prior to the year 1923, and thereafter fixes a basis for charges wholly dissimilar to those fixed in other permits.

Many other permits fix the charges at a low rate for the first year, gradually increasing to $1.00 per horse power for the tenth year, and providing that thereafter the Secretary may review and revise the charges.

Yet in at least one case, I am informed, in which the rates were fixed for ten years at an ascending scale ultimately reaching $1.00 per horse power for the tenth year, providing "that after the expiration of the ten years the Secretary of the Interior shall have the right to readjust such rates if, in his judgment, the circumstances of the case appear to warrant such action," the rates were, nevertheless, raised on the third year to one-half mill per kilowatt hour.

For a continuous use of power at the generating station, one-half mill per kilowatt hour is equal to $3.26 per horse power per year.

It is stated that the excuse for this raise was the fact that the permittee was, for reasons beyond its control, compelled to ask the Department of the Interior for an extension of time in which to complete an additional development. This gave the Department the opportunity to impose new and more onerous burdens on the original developments as a condition precedent to granting such extension for the new development.

It is the making use of such opportunities to impose new and more onerous burdens when the consent of the Department is asked in a particular case, that makes investors apprehensive and afraid to go on government land.

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Many investors have a strong feeling that the Department officials are today, and for many years past have been, unfriendly to any permanent development and ownership of water powers by the public at large, and are, therefore, anxious to discourage the same as much as possible in order to ultimately bring all powers under government ownership and control.

This feeling deters investors where government land is involved, and adds greatly to the difficulty of raising capital at reasonable rates or at all for Western development purposes.

To wholly remove this fear, and to make it easy to start again the flow of investment capital to the West for power development, it is suggested that something be done to absolutely protect, and thus reassure, investors. This is the only way that development of the West-

ern resources by private capital is practicable. (Applause.)

If it is the intention to stop Western development by private capital in order that the government itself may monopolize these developments at some later date, the government ought to come out in the open and frankly declare itself. (Applause.)

If such is not the intention, then the fact ought to be stated in the most unequivocal and positive language, and the enormous amount of idle money now waiting safe investment be, in equally clear and positive language, invited, encouraged, and protected in the upbuilding of this Western country. (Applause.)

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The foregoing regulations contemplate and provide for no court review of the action of department heads. The Secretary of the Department is prosecutor, complainant, judge and jury, and beyond him the investor cannot appeal on any of these matters, involving the life or death of his investment.

Having, at the outset, contracted to waive the rights and immunities which would otherwise attach to his property, and protect it from confiscation under constitutional guarantee, the developer of the community cannot later complain that his contract is being literally enforced to the point of confiscating his investment.

May I commend to you the reading of the full text of all rules and regulations of the Departments of the Interior and Agriculture for the last 15 years? You will find them interesting, variable, but continually increasing in their restrictions, burdens and discretionary power.

Read them first in search for congressional authority for them—compare them with the Acts of Congress.

Read them from the viewpoint of a prospective investor, who is not obliged to invest his money in water-power properties, but who may select his investment from many thousand lawfully protected projects all over the civilized world.

Would you invest your own money under these permits? Would you be willing that the proceeds of your estate upon which your widow and your small children must depend for a living be invested under these permits?

If not, then is it right to ask or expect the administrators of other men's estates to invest in such precarious tenures? (Applause.)

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I wish now to emphasize, as clearly as possible, the radical distinction between the permanent structures of water-power developments costing millions of dollars under revocable permits subject to departmental discretion, alteration and revision; and other activities, such as stage lines, photograph galleries, fishing and summer camps and cheap hotels under revocable permits, where the investment is relatively small, or is readily removable to another place without serious loss.

Revocable permits may be entirely proper and reasonable for the latter items of trivial value, but how can concrete dams, steel pipes and ponderous machinery, bedded in

concrete foundations, be removed without enormous loss; and further, does it not occur to you that from the very nature of both the structures and the business commercial power plants are neither transitory nor temporary?

Under the laws of many states a public service corporation, acting under a franchise from the state, cannot discontinue its assumption of the duties of a public servant, but is bound to continue them for all time.

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The fishing camp or summer hotel, operating under a revocable permit, is neither compelled to continue in business nor to increase its facilities. The power company is bound to do both.

The measure of the cash investment is the measure of the public service facilities. Facilities never decrease, even if the population remains stationary, because the people insist upon having more and better service year by year.

New uses for electric power are constantly being developed, and in the West the population is growing continuously. Both these factors mean a large increase, year by year to the end of time, of the facilities for serving the people and a correspondingly large increase of investment capital.

The capital account cannot be amortized. It cannot even remain stationary if there is ordinary improvement of facilities. It must always increase and on an increasing scale.

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There is now being spent in the United States more than $400,000,000 every year merely to provide increased facilities needed by the existing public utility electric systems (steam and water power) for properly serving the people.

Under favorable water-power laws I haven't the slightest doubt that within ten years the annual increase of investment capital required for needed extensions to all power systems will exceed $1,000,000,000 and will continue to steadily increase year by year.

There is today more money invested in electric systems than in any three kinds of public service in the United States, excepting only the steam railroads, and I expect to see the time when the railroads will be largely electrified; then undoubtedly the electrically operated utilities (steam and water power) will have a money value far in excess of the combined value of all the other utilities of every kind.

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As a result of thirty years' experience, I tell you, without fear of successful contradiction, that there is no public utility of any kind in the United States which can, over a considerable period of years, increase its gross business as much as 15% per year and use its net earnings to provide the plant and distributing facilities to care for such growth and have one cent left for the payment of interest on bonds or dividends on stocks.

It is with very rare exception that any such company can grow ten per cent per year and do this.

This means that to properly serve the public it is imperative that new

money must be provided year by year in large and ever-increasing amounts till the end of time by our people at large.

It cannot be pulled down from the air. It certainly cannot be gotten out of the net earnings of the company in sufficient amount to provide for healthy growth, if the business is pushed, as it ought to be so as to promote the development and best interests of the territory served. It is a question of constantly increasing the investment, or the alternative is stagnation in the company's business—stagnation in the communities served.

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Now, think how absurd it is to put this enormous and imperatively necessary public utility in the same category as the fishing camps, photograph galleries and cheap stage lines operated under revocable permits.

Many power permits have already been revoked. Many suits are now pending to eject the operators of these plants from the public domain because they objected to the many onerous and unbearable burdens heaped upon them by the Departments.

Suppose the people whose money is already invested upon government lands, yielding to the great power of the government, should acquiesce in the prayer of the government in the ejectment suits and stop their plants—desert their posts as servants of the people. What would be the result?

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Does the government wish to shut down these plants and thus deprive hundreds of thousands of acres of land of the necessary irrigation water now being pumped upon them; to stop the operation of the street and interurban railroads carrying the United States mails; the pumping of water for the municipalities, the lighting of the streets and the homes of the Western people? This could be the only effect of the granting of the prayer of the government in these suits.

Why does the government wish to visit such punishment upon the Western people? Is any such procedure fair to the West or desirable in the public interest, particularly when the average value of all the lands involved at the highest price for which it could possibly be appraised for all purposes, including water power, is probably not more than $20 per acre and of an aggregate value of not more than $100,000?

Especially may we ask this question when the public serving power companies, and no doubt the states involved if necessary, would be glad to pay in cash the utmost amount that any fair-minded jury thinks the property is worth for every purpose, if the court should find that such is the law.

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How strange the whole squabble is! (Applause.) How exceedingly valuable a few acres or perhaps a few inches of worthless land may be made by the "power of might" when a public service corporation wishes to flood a part of it for a reservoir or run a pipe line over it for power purposes for pumping water on the soil and lighting the

homes of the irrigation farmers; for grinding their corn, for cooking their meals and for lightening the burdens of the housewife! (Applause.)

Contrast this with the attitude of the government when a right of way is needed for a railroad corporation; for a county road, for mining claims, for the building of tram roads for mines, for the building of reclamation water-power plants by the departments in Washington.

Contrast this also with the apparent desire of the Departments to practically thrust Carey Act lands on anybody who will use them through the machinery of the states.

Why is it that all of these last-named uses are so commendable, so much desired in the public interest, and yet what has become, and what will undoubtedly continue to be, the most imperative all-around necessity—the electric power plant and its distributing system — is pushed out beyond the pale—marked with the brand of the undesirables—placed under the ban of departmental disfavor? (Loud applause.)

Can you believe that Congress, in its wisdom, ever intended that the laws on this subject should be construed and administered as has been done? (Applause.)

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I have been asked to comment on the Ferris Bill as favorably reported to the Senate, and from the viewpoint of the ordinary man who has money to invest and has to decide whether he will put it in some one of the hundreds of thousands of lines of business which provide nearby investment opportunities or into concrete dams and steel pipes in the canyons of the distant West, and in hundreds of miles of straggling pole lines over the Western deserts.

The Ferris Bill, as reported by the Committee to the Senate, is a great improvement over the same bill as passed by the House of Representatives. While the framers of the bill undoubtedly did their best to get a fair and practical working measure, with the view of promoting the rapid development of the West and the best interests of the people at large, I am positive that if the bill is passed without further radical amendments it will only serve to temporarily instill false hopes in the minds of the uninformed.

It will be a disappointment to its framers. It will accomplish exactly the reverse of that which is intended.

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From the investors' standpoint the most disconcerting and discouraging thing in the Ferris Bill is the fact that apparently it has been drawn with the view of very largely continuing the same departmental policies and practices that have in the past proven so unsatisfactory and so disastrous to development.

In fact many believe that the object of the bill is to legalize the complained-of departmental practices of the past.

Capital dreads and avoids a hostile or even unfair atmosphere.

I believe I am safe in saying that investors generally feel that the departmental-made laws, in the

form of rules and regulations, which I have just discussed, breathe in an atmosphere of hostility and unfairness towards power development by private capital.

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Now, I take it that the Ferris Bill is honestly intended to induce people to devote their savings to a public use in developing the water powers of the West for the public welfare. I am certain the bill will fail of its object unless this adverse flavor of which so many complain is removed from the bill.

If the present revocable permits are held by the court to be really revocable, after the water has been put to a beneficial use, then the Ferris Bill will be a qualified improvement thereon only as to the matter of tenure. This is of but little consolation, however, if everything in connection with the business is left wide open subject to the arbitrary, unlimited and non-reviewable power of the Secretary so long as same does not conflict with the specific items contained in the bill for the qualified and temporary protection of the investor; those items referring only to the question of limited tenure and partial compensation.

In all other respects there is continued in the Secretary all of the present powers to make just as harmful, changeable and confiscatory rules and regulations as can be made under the present rules, regulations and practices of the Departments.

This is infinitely more serious and more fatal than the question of the levy of a known federal tax on the waters of the Western States, and in that way upon the consuming public of the West, because if such tax is in the beginning fixed definitely for all time only those consumers would then be served who could afford to pay such federal taxes in addition to the operating expenses, the state taxes and a fair profit to the investor. The tax might be unjust, but at least nobody could plead confiscation under a law of this kind, because they would know exactly what the tax would be before the investment is made.

They would go into the enterprise with their eyes open and with full knowledge beforehand of the highest tax they could expect, but not so under the present rules, regulations and practices of the Departments, and in this respect the Ferris Bill is no better.

It says "That the Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this Act into full force and effect." This does not limit the discretion of the Secretary any more than the present law.

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In order that you may fully appreciate the seriousness of leaving all of these matters so vitally important to the development and welfare of the Western people to the ever-changing views of the ever-changing secretaries, please remember that during the period of fifty years from the administration of President Lincoln in 1863 to the

beginning of the administration of President Wilson in 1913, twenty different Secretaries of the Interior and innumerable bureau chiefs have held office.

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Do you realize how kaleidoscopic have been the rules and regulations and views of all these people in this fifty-year period? Think how much uncertainty and what a lack of dependability and safety of tenures for the investment of many hundreds of millions of dollars in water powers there will be under the Ferris Bill during the next fifty years, if the Secretaries of the Department of the Interior continue to be changed on an average of once in every two and one-half years, with the consequent change in bureau chiefs, as has been the case during the past fifty years. How many changes in "Rules and Regulations" (Department-made laws) will there be during this period and how will these changes affect trusting investors?

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Suppose that all the railroads of the United States crossed a few inches of government land, and were to be administered in every hamlet of the United States by the Departments in Washington in the same way as has been attempted as to water powers in the past, and as can be done under the Ferris Bill.

Suppose such administration should be legalized by an Act of Congress specifically providing for a few of the details of the business, and instead of leaving the millions of other details to be worked out by the company pursuant to the laws of the various states in which the property is located, the Act of Congress should specify that these railroads should run on two tracks and each car should have at least four wheels, and everything else should be left to be provided for by rules and regulations to be fixed by the departmental Secretary.

What kind of order, stability and uniformity do you think there would be in the railroad business, especially with a new secretary and numerous new bureau officials with new ideas coming in on an average of once in every two and one-half years, as has been the case in the past fifty years?

Is it not clear that under such a bill the Secretary would have all the powers of Congress so long as the railroads were operated upon two rails and there were at least four wheels under each car?

And, again, suppose that under a national revenue measure duties were fixed upon a few items and everything else is left to the Secretary to be embodied in rules and regulations as under the Ferris Bill, what kind of business conditions would we have in this country?

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This sounds far-fetched and strange, yet it is an exact parallel with the practices of the past, and judging the future by the past this will be the logical effect of the passage of the Ferris Bill in its present form.

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Mark you, there is nothing in the Ferris Bill saying that the new rules and regulations are to be reason-

able, or permanent, or definite, or reviewable, nor does the bill contain any guide whatever as a basis for the drafting of such rules and regulations.

They are limited in their scope to just two or three specific things. Everything else is left wide open to the discretion of the Secretary, and under the rulings of former Attorneys General Moody and Bonaparte, as I understand them, the Secretary is free to use his discretion favorably or unfavorably in any way he sees fit, except as to the very few specific items in the bill.

This law will permit the making of one charge to red-headed men, and no charge to black-haired men. (Laughter and applause.)

It permits the making of charges which would absolutely prohibit development in one state, and might go to the extreme of liberality in another state.

Under this bill the rules and regulations can be varied to suit the Secretary's ideas of the treatment which, in his opinion, ought to be meted out to what he considers the "good corporations," the "good hamlets," or the "good states" on the one hand and the "bad corporations" and the "bad hamlets" and the "bad states" on the other hand. (Applause.)

I don't believe any departmental Secretary who fully realizes what the administration of this proposed law means will willingly assume its administration. The Secretary might also embody in the new rules and regulations, and might insert in the lease a clause to the effect that they can be changed at any time at his sole discretion, and a tax of one mill, or, if he pleases, $1,000 per horse power per year be levied.

In fact, all the objectionable clauses which I have heretofore mentioned—and I have not fully covered the ground by any means—might be put in the new rules and regulations or in the lease except only as to the few specific items mentioned in the bill, and bear in mind that any investor, or town, or state, who feels that he has been unjustly treated has no right to a full and impartial hearing and equitable review. The decision of the Secretary is the final law.

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Suppose that instead of singling out the few government land water power sites of the West as victims of this "class legislation," the steamship docks, railroads, hotels, office buildings, store buildings, farm houses and factories of every kind in the United States were compelled to also be administered by a single, all-powerful but ever-changing Department head in this way?

How long before the whole United States would be in chaos?

How long would the American people stand for such treatment?

What justification is there for such legislation?

Who will be benefited?

Who wants it, and why is it wanted? (Applause.)

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The federal government practices

in reference to water powers using any government lands have been more arbitrary, more extreme, than anything ever proposed by Alexander Hamilton, or any of the other ultra-federalists who had to do with the formation of our government.

I don't believe any of these people would, for one moment, ever have dreamed of going to such extremes of absolute central power.

Thomas Jefferson, I believe, did more than any of the other founders of our government to build the structure of our Constitution based upon the balanced powers of independent sovereigns. The federal government controlling national, interstate, foreign, Indian and navigation matters; all the other powers not enumerated being left to the states and the people. Our government was not planned to be one of paternal centralization and absolutism, as practiced in the old kingdoms of Europe, and, I may say, as has also been practiced as to public land water powers in this country. Our government in its domestic affairs was to be one of decentralization and local self-government.

This was considered good Democratic doctrine at the time. I believe it is still. This provides the basic reasons, as I understand it, why the states desire to decentralize the administration of these water powers. I understand they object to long-distance government and to unequal and arbitrary taxation, just as our New England friends, prior to the Revolutionary War, objected to the three-thousand-miles-away government and arbitrary taxation by King George. (Applause.)

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Everybody knows that the Secretary of the Interior is the hardest-worked official in the Cabinet; that he is over-burdened with innumerable complicated problems, carrying with them great responsibilities.

Everybody knows that it is not humanly possible for him to personally investigate on the ground all the circumstances, facts and conditions vitally affecting the many thousands of important matters which must come before him for consideration and final decision.

No Secretary can be expected to know by divine inspiration all the essential local facts as to the public utility business which he must know to render with certainty prompt and just decisions. (Applause.) Therefore, as a matter of necessity, he is compelled to delegate work to subordinates, and they to bureau chiefs, and the latter to sub-chiefs and finally to field inspectors.

I don't see how it is possible for the Secretary to even read all the detailed reports from the field men up which are compiled in reference to the very large number of important matters which he must consider, and upon which, under the present system, his decisions are not reviewable, but are final.

This system is just as much a long-distance, all-powerful, single-man government, and, it seems to me, must always be just as unsatisfactory, as the long-distance government which King George tried

upon the American colonies. (Applause.)

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The very foundation of our present government is based upon the theory that the local people shall govern themselves as to local matters. (Applause.)

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Our government is based upon the theory that every property owner is entitled to a full and complete hearing on all matters affecting his property. That this hearing shall not be three thousand miles away, but as nearly as practicable in the vicinity of the location of the property itself, where the local presiding judge has plenty of time to hear all the facts.

Where plenty of first-hand information is obtainable from people who have personal knowledge of the matters at issue, and where, if necessary to reach a just conclusion, it is not impracticable to even view the premises.

An impartial review is provided in every case for the safety of all the parties in interest.

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Except as to water powers on government lands, our form of government provides for all of these things.

This is the rule of government that has in later years been so successful in all of the English possessions.

It has given universal satisfaction.

If the people affected feel that they do not get equity under this plan they have it in their power to change the plan.

The departmental practices, rules and regulations for the past fifteen years as to water powers have been just the antithesis of this. Is there any reason why rules of equity and fair dealing, and the laws generally, should be any different when a power company needs a right of way of necessity over a few acres of government land for a public use, than is the case when a similar right of way of necessity is obtained over the lands of Farmer Jones or Farmer Brown? It is this class legislation; it is this unfair discrimination that is disturbing the American people today; that is frightening away the investors and is causing great stagnation and public dissatisfaction in the Western states. (Applause.)

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I do not find that people are afraid to trust the government or any department of the government if the governmental matters affecting them equally affect every other citizen in the United States; for, if such is the case, an injustice is quickly righted. There is safety in numbers.

On the other hand, if there is "class" legislation, as is now proposed, affecting only the very few, then it is only the ox of the few which is gored, and the millions of other people are too busy with their own affairs to bother themselves with righting the injustice done to the few.

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The very disturbing tendency to encourage governmental or munici-

pal ownership shown in the present rules and regulations again comes to the front in the Ferris Bill, which states "that leases for the development of power by municipal corporations for municipal use shall be without rental charge." It is probably thought that whether or not the municipality is charged or taxed does not interest the investors whose property is not in competition with the municipality, but this presumption is not correct. The flavor, like the straw, shows the way the wind blows.

The idea that the government favors municipal and governmental ownership and operation, as against regulated public service operation, is a very disturbing factor to capital and has a very harmful influence by greatly increasing the rates which must be paid for private capital for a public use, and in this way harms the consumers and retards development.

Investors feel that all public agents should be put upon a parity. whether the money to serve the public is furnished by the taxpayers or by private investors. They feel that private investors should not be invited to devote their money to a public use unless they are given an equal chance in competition with other public agents. (Applause.)

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It has been stated here that the present governmental policy relating to water powers is not for the purpose of control, and not for the purpose of continuing the present departmental laws in the form of regulations. It has also been stated here that the governmental water-power policy is not for the purpose of obtaining revenue, and that the most the government wishes to charge for the use of a right of way of necessity to utilize the state's water is the "infinitesimal" amount necessary to cover administration. It has been stated that the charge has never at any time exceeded $1.00 per horsepower.

I admit an entire lack of information as to what the real objects of the government's water-power policies of the past fifteen years have been, although I can say that a great many people believe that the objects have been—

(1) To ultimately have all the water powers owned and operated from Washington as a departmental monopoly, and if this should prove impracticable, then—

(2) To have all the water powers at least controlled and regulated by the departments in Washington, and—

(3) In any event to get enough money out of the water powers to maintain the ever-increasing expense of the bureaus in Washington, and to also defray some portion of the expenses of the National Parks.

I know, and can say positively, that $1.00 per horse power per year is not the maximum that is being charged. I have information which I believe to be correct that at least one contract provides for the payment of as much as one-half mill per kilowatt hour and that this rate, measured at the power stations for continuous use of the power, will equal $3.26 per horse power per year.

I submit that this is not an "in-

finitesimal" charge. If all the water powers now developed in the public land states paid an annual charge of $3.26 per horse power the revenue produced would be over $5,000,000 per annum.

I leave it to you if this is an "infinitesimal" charge. Compare this with the charges in Norway, for instance, where the *government, in this case, owns the water* but has given the companies manufacturing nitrates at Notodden and Rjukan definite tenure and charges for the use of the government's water only twenty-seven cents per horse power per year, and leaves them absolutely free from any government regulation whatever.

Four hundred thousand horse power are now in daily use at these plants where the Germans are getting a lot of their nitrates to carry on the war, and for fertilizer.

We haven't any atmospheric nitrate factories. We were going to have, but this foolish or mis-directed "conservation" policy, so-called, has driven the industry over to Canada. (Applause.)

I understand that the $3.26 rate which I am informed our government is charging in one case is more than one-half of the total cost of the Rjukan power in Norway. The cheapness of power is to some extent a relative question.

Do you know that the cost of steam-generating apparatus has been reduced two-thirds and the efficiency doubled since 1903? This tendency towards lower investment cost and greatly increased efficiency of steam plants is continuing at a rapid rate with the acme of perfection still far in the distance.

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Plans are now being made for the construction of a power plant on the Ohio River, where there is an abundance of condensing water and very high grade cheap coal available, which it is estimated will produce steam power at a manufacturing cost of not to exceed $9.80 per horse power per year, based upon the plant being operated continuously; and the investment cost of this plant will not exceed one-half the average costs of the water-power plants in the West. It is estimated that the taxes and cost of money will not exceed $3.75 per horse-power year, making total costs, including everything, $13.55 per horse-power year.

In other words, if my information is correct, and I believe it is, the government now has a contract requiring the power company to pay for the use of a right of way over a few acres of practically worthless land one-third of the total operating costs of the steam power plant now being built on the Ohio River in the heart of the greatest industrial center of the United States, and to pay a federal tax exceeding half the total costs of the Norwegian power at Rjukan.

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To be able to consume large quantities of the raw materials, increase population, give employment to labor, develop the natural resources of the West, by manufacturing, electro-chemical, and electro-metallurgical developments, it will be necessary for the Western people to com-

pete with the cheap water powers on the navigable streams of the East, which will be available as soon as legislation has been passed to permit of their development. The West will also have to face the more serious task of competing with the exceedingly low steam costs now obtainable in the coal districts of West Virginia, Ohio and Pennsylvania and also obtainable in the numerous natural gas and oil fields throughout the country.

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It is not a question of water power in the West competing with fuel in the West, but, from a manufacturing standpoint, it is a question of the water powers in the West, plus the added cost of transportation to the populous centers, competing with the steam plants located in the greatest coal fields of the world at the very door of the manufacturing center of the United States. The Western people must also compete with the world powers having water transportation facilities; especially with the eastern Canada, Norwegian and Icelandic powers where developments are extremely cheap, tenures definite and safe and the attitude of these governments friendly.

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A tax by the federal government for more than the fair value of the right of way (for all purposes, including water power) used in serving the people is the arbitrary exercise of the "power of might." Many believe it cannot be justified in law.

I am certain it cannot be justified on the grounds of equity and fair dealing. Any such charge by a private owner would be upset by the people or by the government itself as an unfair practice; as a "hold-up."

No doubt the idea of excessive charges has been stimulated by the yellow journal and muckraking accounts of the wonderful profits in the water-power business. It has been represented as a veritable gold mine.

As a matter of fact the reverse has been the case. I don't know of a single instance of fancy profits having been made in the public service business, and I certainly do not recall a single instance where water powers doing a strictly wholesale business have been even reasonably profitable, as compared with other lines of business generally.

The safest profits come from the distributing end of the business and not from the generating business *per se*.

Look around you at the enormous distributing systems operated by steam plants, such as the Boston Edison Company of Boston, Commonwealth Edison Company, Chicago; Philadelphia Electric Company, Philadelphia; New York Edison and numerous other generating and distributing systems I could mention, where all the power is generated by steam, and you will find that in every case the touchstone of profit has not been water power at all, but the very large volume of distributing business done along proper commercial lines which make for low operating costs,

good service and low rates, irrespective of the source of the power.

A few fractions of a mill, or even two or three mills, are usually of no vital importance in the ordinary lighting and small power and distributing business where the power cost item is relatively very small, as compared with money costs, administration, operating, maintenance, taxes and similar expenses.

It is only when it comes to heavy power work that very low generating costs are imperatively necessary. Electro-chemical, electro-metallurgical work, the mining and milling of low grade ores, heavy transportation and pumping water for high lift irrigation, and many other similar lines, are only possible with extremely cheap power costs. The possibilities for enormous developments and for the expansion of our commercial life along these lines is almost infinite.

With fair laws which will insure ample cheap money the development of our country along these lines will be measured principally by the volume of power obtainable *and by its cheapness*. Very low costs not only stimulate manufacturing but have a most remarkable tendency to create entirely new uses.

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The efficiency of water wheel machinery has already reached 90%. The efficiency of steam plants is still under 20% and is improving at a rapid pace.

At the present rate the time will soon be reached when only the largest and cheapest water powers can compete with steam plants where fuel and condensing water facilities are favorable.

The West is unfavorably situated, in most part, as to ideal steam fuel conditions. On the other hand, nature has abundantly endowed it with unusually good water-power facilities.

The East has already largely developed its water-power facilities and is now rapidly forging ahead with wonderfully cheap steam power competition such as has been cited in the Ohio River case and as has been practiced for many years in Chicago. Is it fair that the sparsely-settled and struggling West shall be further handicapped in its competition for the Eastern as well as the world markets by artificial restraints and restrictions on the free exercise of the right of its people to develop its own natural resources upon fair terms? (Applause.)

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The United States does not own the water or any riparian rights as known in the East. All it has to sell in this matter is a right of way of necessity upon land now mostly worthless and unsalable, except for water-power purposes.

The West is not a suppliant for charity. (Applause.) If the laws do not give it the right of way of necessity for its pipe lines and its power dams then it should not, in all fairness, be forced to pay an unfair price either for the fee or by way of rental for the necessary right of way over government land.

It is not asking that the value of such land be based upon its use as agricultural or for any other par-

ticular purposes, but is willing to pay for the fee or as rental the full value of such land for all purposes, including power purposes.

If the government obtains for the fee or by way of rental the full value of its land for all purposes, the same as farmer Jones or Brown would receive for his land, upon what principle of fair dealing can it ask for more? (Applause.)

My own notion is that the government could very well afford to lease a right of way of necessity for any public use for the flat sum of $1.00 per year. In any event I believe that the increased development and real conservation (the great saving of non-replaceable fuels) which can easily be obtained by freeing water-power capital from the bureau or departmental law of ever-changing men and governing it by fair laws that apply to everybody would be worth a million times more to the people of the United States than the net amount the government will ever receive as rentals based upon the fair value of the right of way used for all purposes, including power.

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The statement has been made here that a 200,000 horse-power development is being made on public lands under the present rules and regulations, and that also a very large amount of power development is under permit. I confess my inability to find water-power development of consequence now under construction on government lands, except where such development is a part of a large inter-connected system having other sources of power not on government land and where the government land power houses are merely an incident to such large inter-connected transmission and distributing system, and their total loss would still leave enough property in private ownership to form a fairly substantial security for the outstanding bonds.

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It should be made clear that "permits" for water-power development under the present rules and regulations mean nothing because such permits involve only a trivial initial expense. The permittee is under no penalty or other liability if he drops them. They are mere options.

It is a splendid system for the speculators!

Of course, with the prospect of the enactment by Congress of some fair legislation all the "early birds" are rushing to take advantage of the permit system to get options on government land rights of way for water powers. This does not mean that these powers are actually being constructed or that they will ever be constructed. Any inference to that effect is wholly misleading.

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The statement has been made here that recently 94,000 horse power has been developed by one company under permit on the National Forest.

I am glad this was mentioned.

I know all about this particular case, which is another illustration of where a large power system covering a vast amount of territory and having large generating capacity on private lands has "taken a chance"

by putting part of its power system on government land. The principal owner of this property is a public-spirited man of enormous wealth, and able to do things and take "long chances" which the common people and the administrator of estates and savings banks could never afford to take.

Even under these circumstances I very much doubt if he would have undertaken this enterprise if, at the outset, he had realized the difficulties which would be encountered in ultimately financing the company's requirements. Although the company had a vast amount of property of enormous value, independent of anything built upon government land, yet he was unable to finance this construction upon the merits of the enterprise itself.

He was compelled to raise construction money by backing the company's paper with his own personal guarantee. I have personal knowledge of this fact because a certain large financial concern asked me to investigate and advise as to the paper. I did so, and recommended the paper not on the credit of the company itself, but on the guarantee of this man wholly independent of the credit of the company.

May I ask how many enormously wealthy and public-spirited men are available to loan their personal credit to back up Western enterprises made speculative by reason of being partly on government land and which, without such guarantee, cannot stand on their own bottoms?

Is it fair that the development of our Western country shall be made dependent upon the ability of our people to find enough multi-millionaires with the courage and public spirit to personally back the paper of hundreds of Western power enterprises which are only waiting for fair treatment to spring into real important commercial assets in the development of our now stagnant Western country, just because a small part of a great intrastate power system, involving perhaps thousands of miles of transmission and possibly a hundred millions of dollars investment, uses a few acres or even a few inches of government land for a pipe line? (Applause.)

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Bear in mind again that it is only the very rich men who can "take chances" by making risky investments on government land under present laws or under the Ferris Bill as proposed. They can lose five millions or perhaps ten millions and scarcely miss it, and never change their mode of living, but how about the plain, ordinary men who, by hard work and economy, have saved up a few thousand dollars?

Can they afford to have their possible earnings limited by Public Service Commissions to seven or eight or even ten per cent and still risk their little all on these ventures made highly speculative by the United States Government?

Is it the intention that our laws shall be so framed that they can be availed of only by the rich to grow richer?

Is there any reason why the investment opportunities in water powers should not also be made safely available to the toiling masses,

each with a few hundred dollars of savings?

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The governments, national and state, are always solicitous for the safety of the small depositors in the national banks and the savings banks. If our toiling masses deposit their hard-earned money in a savings bank or buy life insurance policies everybody commends them. If these same toiling masses devote their life savings to a public use, by investing in Western water-power securities, to do something constructive, to help develop the country, is not such course just as commendable? (Applause.)

And, if so, why should they not be invited, encouraged and protected to the full limit by the strong arm of all of our governments, national and state? (Applause.)

It is this spirit, this flavor, this evidence of governmental solicitude, this action alone that is needed to bring forth untold millions of dollars at lower interest rates than have heretofore been dreamed of that will really do something worth while; that will make our Western country grow as it has never grown before; that will be vastly beneficial to the nation as a whole. (Applause.)

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The Ferris Bill provides that the physical combination of properties, the method of keeping books and reports and the length of the contracts for power are all subject to the control of the Secretary of the Interior.

The value of the government land involved, for all purposes, may not be $10, and the state laws may be, and in some instances are, mandatory as to some of these matters. Investors are, therefore, made the victims of the irreconcilable conflict of authority.

If they disobey the Secretary, their lease is open to forfeiture, and they are then subject to ejectment suits, and if they obey the Secretary, then they are liable to be penalized and sent to jail for violation of the state laws.

This conflict of authority is intolerable and fatal to investors. We will never get anywhere until this question of which sovereign is in control is definitely settled once for all. (Applause.)

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The matter of sovereign control again comes up in considering the question of the regulation of rates and service. Many of the Department officials have asked why the power people prefer state regulation as against federal regulation.

The answer is, they do not.

The lawyers advise that regulation of purely intrastate business is inherent in the state, and cannot be taken away by the federal government without violating the Constitution, which violation would mean robbing the Western States of their sovereign equality with the original thirteen states. The investors merely object to the impossible position of being regulated at the same time by two conflicting and all-powerful sovereigns. (Applause.)

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Let us come back now to the Ferris Bill. In addition to the great uncertainties and dangers of

new and onerous, and possibly confiscatory, conditions being exacted in the new rules and regulations, and as a condition precedent to obtaining the consent of the Secretary for the things specified in the bill, and requiring his consent, the bill itself provides for taking over the property at the end of the period for less than its fair value, as fair value has been construed by every court of equity in the civilized world. The developer of power, by accepting the terms of this bill, is forced to stipulate away his constitutional right to insist upon just compensation if his property is taken away from him. The developer of power under this bill may be further injured in this respect, at the end of fifty years, by having a new and unfair renewal contract forced upon him in the event that he refuses to take such price as may be offered by the Departments for his property.

The bill reads that if the government does not take over the property "then the lease at the option of the lessee shall continue in existence upon the terms and conditions in force at the time fixed for its expiration, until such time as the property is taken over by the United States, as provided in Section 5, or by a new lessee, as provided in Section 6, or the lease is renewed; provided, that the original lessee shall have a preference right to renewal over and above any new lessee *upon such terms and conditions as the law and regulations then in force shall authorize.*"

How absurd and unfair this is! No one objects to having his property subject in all respects to the laws of the land which require that the property of everybody must be treated alike and under the Constitution the property of nobody can be taken away from him except for a public purpose, and then only upon payment of just compensation.

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While the lessee is to be offered the preference in any new lease after fifty years, it is easy to conceive circumstances in which a competitor might gladly offer to pay the government a larger rental or tax and assume other burdens on a basis which of itself is poor business—terms which the original builder could not possibly afford to comply with—just for the purpose of getting rid of the original developers of the property. There might be many and powerful reasons why the competitor would feel that he could afford to do almost anything to eliminate the competitive possibilities of the particular property.

This bill contemplates the possibility of not taking over the property for public ownership as can always be done under the present general law, but taking it away from one set of private owners to turn it over to another set of private owners. This opens up all kinds of opportunities for the "sandbagging" methods by one's competitors declared by the Federal Courts in recent anti-trust cases to be unfair and unlawful.

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Just think where this governmental policy is going to lead us.

Now, suppose the builder of the property declines, or is unable, to

meet the "sandbagging" bid of his competitor, then his property is to be taken away from him and turned over to his competitor. After the investor has spent a lifetime developing the property and building up the business, it is to be ruthlessly choked out of him under this bill and turned over to his more wealthy competitor for an amount less than its fair value. (Applause.)

This bill specifically excludes the payment for certain very important going value or intangible items, which in every growing property of size represent large expenditures of real money honestly and necessarily made in creating and developing the property and the business in the public interest, and just as important and real as the steel and concrete in the plant. These are items which are today, and have for all time been recognized by every court of equity in the civilized world.

Yet as the provisions of the bill, in this respect at least, are mandatory, no government official would have the right to violate the specific wording of this bill by paying the unqualified fair value of all private property taken over at the end of the lease, no matter how certain he might be that such full and just payment upon the lines laid down by the established courts of equity in every English-speaking community is necessary to avoid confiscating the savings of private investors which have been honestly and faithfully devoted to the public service.

Now, if the investor accepts the lease under this bill, he is bound by contractual relations to acquiesce in the following:

(1) That if the government should take over the property for itself or for others, as provided in the bill, then it or the new transferees or lessees shall confiscate a part of his investment.

(2) If a new lease is availed of, he is faced with the possible alternatives of meeting (a) a "sandbagging" bid from his stronger competitor, or (b) accepting a new lease which may be as arbitrary, unreasonable, harsh and confiscatory in its terms and also serious possibilities as exists under the departmental rules and regulations in connection with revocable permits which have governed this subject in the past.

The investor, mind you, is not offered a continuation of the contract under which the money was invested in the first place, nor is he offered the fair value of his property in the alternative. After many years have been spent in building up a safe and permanent business, after there has been eliminated from the business all the risks and uncertainties incident to new enterprises, the investor is offered fair compensation for only a part of his property, and if he doesn't like this will be permitted to continue serving the people "*upon such terms and conditions as the law and regulations then in force shall authorize*," which probably means on any terms not prohibited by law, or stated affirmatively, as may be "*fixed by the Secretary.*"

Would you expect even a Mexican boss bandit to change the rules

of the game after the cards had been dealt and the money was on the table? (Laughter and applause.)

Yet, this is exactly, in effect, what the Ferris Bill authorizes to be done. Nowhere does it say, if the law or the regulations are changed to the detriment of the pioneer Western developers, that contractual stipulations with the government under the Ferris Bill or otherwise shall not be construed to impair, in any way, their property rights under the Constitution and general laws.

No; the investors have at the outset been forced, by contract, to surrender all such constitutional guarantees of fair dealing that is enjoyed, without affirmative legislation, in every other line of business and to practically place themselves at the mercy of ever-changing departmental officials. (Applause.)

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Investment capital for water powers on the public lands, by specific stipulation, is denied the same protection as other property under general laws.

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Why should any sane man contract away his property rights and subject his investment to the simultaneous arbitrary regulation and control by two conflicting sovereign powers?

Why should he put his money in an enterprise where some one else has a long-time option to take over every dollar's worth of his property at a price which may not equal more than sixty or seventy per cent of its fair value, or of its cost, and where, at the same time, notwithstanding all these unusual and very grave risks, there is no possibility of his being allowed to earn more than eight or, at the outside, ten per cent?

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Bear in mind that this bill also forces the developer to not only give the government an option on the property built on government land, but in addition on "all properties which are dependent in whole or in part for their usefulness on the continuation of the lease." Remember that as a rule only a comparatively small part of large power systems are on government land.

It may be that the proportion on government land is less than ten per cent of the total, yet for the privilege of using perhaps only a few acres of what is now wasted and valueless government land the developer is compelled to give an option upon the remaining ninety per cent of his inter-connected power system, including power stations, on private land, thus clouding the titles and injuring the stability and market value of his very much larger investment on private land.

Remember, again, that this option upon both the government land and private land property is for less than the fair value, and for less than the cost of the property on private land as well as on government land.

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If anyone disagrees with me as to the effect of this bill I commend to him the further study of the bill, and at the same time a conference with the practical operating and financial men, upon whose shoulders must fall the burden of raising the large amounts of money neces-

by replacing the old forms of government by law with a new species of government by one man whose decisions depend upon his discretion, which may be arbitrary and unjust, but in any event are final? (Applause.)

They are not subject to review by courts or any other body. Bear in mind that this one-all-powerful official is not elected by the people. He can dictate rules and so-called regulations which are laws within themselves and which may permit Western communities to develop their resources under normal conditions or the reverse, but the people must bow to his iron will.

They have no rights of disinterested or judicial review. If they are dissatisfied they cannot go to the polls to elect someone who will work in conformity with the local needs. Did any pro-consul of the Roman Empire ever have more taxing or governing power than is asserted in the departmental rules and regulations of the past ten years, and which arbitrary power can be continued under the authorized rules and regulations in the Secretary's discretion, under the Ferris Bill? (Applause.)

Remember that the power to levy a discriminatory tax is the power to destroy.

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The wording of the rules and regulations, and the wording of the Ferris Bill, is such as to make many dangerous things easily practicable. There is nothing in that bill which provides that the charges shall be uniform or limited; it is wide open.

It is stated that under the rules laid down by former Attorneys General Moody and Bonaparte, the lack of a limiting basis or guide in the bill as to the scope of the rules and regulations which may be made by the Secretary leaves no limit on same, except as to the very few specific items in the bill which, of themselves, are wholly inadequate to protect investors. This means that the door is wide open to continue nearly all the old unsatisfactory and blighting practices of the past.

If it is not the intention to bring about these conditions, then what good purpose can be served by using language which may unjustly lay high-minded and honest officials open to imputations and suspicions of this character?

Why use such language as to make it difficult and probably impossible to raise money for developments in the West?

Why was language put in the bill that at best will greatly increase the cost of service to the Western people, and, by reason of such high costs, retard rate reductions as the business increases, and limit, in a large measure, the beneficial uses to which the enormous amount of now wasting waters of the West can be applied?

Just why should any man or set of men want such unparalleled power? Why should they wish to assume such enormous responsibilities? (Applause.)

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If these policies are continued, I am positive that the loss to the nation by reason of the retardation

of the growth of the West will soon run into many billions of dollars.

Can anyone point out a single person who will be benefited by such retardation of development and increased costs?

Is the pride of authorship sufficiently dear to anyone to justify insistence upon such harmful language, which will surely throttle Western development?

Why should we expect investors to send their money to the West for pioneer power developments under terms which deprive them of the property protection accorded by the Constitution to thousands of other lines of business in their immediate neighborhood and where they can see their property every day?

If it is planned to keep the waters of the Western States idly wasting their potential energy into the sea; if it is planned to keep government lands needed for rights of way for reservoir and power sites for the useful development of these waters reserved from use, then the present power-site withdrawals and the enactment of this law mean exactly that kind of reservation. Then, I say, the wording of the various rules and regulations which have been promulgated to date, and also the wording of the Ferris Bill, is most apt for such purpose; it is well chosen.

I thank you, gentlemen, for your patience. (Applause.)

At 4:45 o'clock the Chairman announced that, owing to the lateness of the hour, it might be inadvisable to continue with the speaking program; that of the speakers present, Judge Frank H. Short of Fresno, California, was next, and asked the pleasure of the Conference with reference to hearing Judge Short at this time.

Judge Short requested that he be not called upon until the next morning session.

There being no objection, the Chairman announced that the speaking program would be discontinued until the following session.

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The Chairman requested all delegates to attend the Chamber of Commerce banquet to hear the lecture of Henry J. Pierce of Seattle, an invited speaker for the Conference program.

Upon motion, duly seconded, the Conference took a recess until 9:30 o'clock Thursday, September 23.

From the Register the Secretary compiled the following list of Official Guests, having the privileges of the floor under the Rules, and submitted same to the Chairman:

OFFICIAL GUESTS.
Having Privileges of the Floor.

Invited Speakers, United States Senators, Congressmen and Congressmen-elect.

SENATOR GEORGE E. CHAMBERLAIN, Oregon.
SENATOR HARRY LANE, Oregon.
CONGRESSMAN W. E. HUMPHREY, Washington.
CONGRESSMAN ALBERT JOHNSON, Washington.
CONGRESSMAN JULIUS KAHN, California.
CONGRESSMAN W. C. HAWLEY, Oregon.
CONGRESSMAN N. J. SINNOTT, Oregon.
CONGRESSMAN C. N. MCARTHUR, Oregon.
CLAY TALLMAN, U. S. Commissioner of Public Lands, Washington, D. C.
SAMUEL H. PILES, ex-United States Senator, Seattle, Wash.
HENRY S. GRAVES, Chief United States Bureau of Forestry, Department of Agriculture, Washington, D. C.
O. C. MERRILL, Chief Engineer, Bureau of Forestry, Department of Agriculture, Washington, D. C.
JOHN H. ROEMER, Chicago.
JOHN C. RALSTON, Spokane.
JOHN H. FINNEY, Washington, D. C.
S. Z. MITCHELL, New York City.
FRANK H. SHORT, Fresno, Cal.
HENRY J. PIERCE, Seattle.

Morning Session, 9:30 o'clock Thursday, September 23, 1915.

Conference called to order at 9:30 o'clock by the Chairman.

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The Chairman announced that if there were no objections, the rules would be suspended, and the address of Henry J. Pierce of Seattle, on "Commercial Necessity of Water Power Development," delivered to the Delegates and Guests of the Conference at the Chamber of Commerce banquet, Wednesday evening, September 22, would be incorporated in the record of the Conference, Mr. Pierce having been an invited speaker of the Conference.

There being no objection, the rules were suspended on unanimous consent, and Mr. Pierce's address was incorporated in the record.

THE NECESSITY OF WATER POWER DEVELOPMENT.

By Henry J. Pierce of Seattle.

It is a strange fact that the proportion of our total available water power thus far developed is only about the same as was the proportion of our agricultural lands under cultivation one hundred years ago, at which time the development of our natural resources had not been commenced.

Today, while all the farming lands of the United States with the exception of the arid portions of the West have been brought under cultivation, and while such great natural resources as coal, oil, phosphate and minerals have been developed as rapidly as necessity required, yet but ten per cent of our available water power has been utilized.

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Up to 1885, when electricity was first utilized for practical purposes, the use of water power was limited to the turning of wheels for operation of a few grist mills and other manufacturing establishments.

During the thirty-year period between 1885 and 1915 6,000,000 horse power was developed out of a total available amount of 61,678,000 horse power.

As the principal use for electric energy has been the operation of public utilities, the water powers thus far utilized have been those located at points nearest large centers of population, though in some instances power is being economically transmitted in large quantities for distances of from 150 to 200 miles.

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The United States Geological Survey estimates that 44,049,000 horse power, or 71% of the total potential available horse power in the United States is contained within the states of Washington, Oregon, California, Montana, Wyoming, Idaho, Colorado, Utah and Nevada, and of this vast amount but 1,622,021 horse power, or 3.68%, is now being utilized.

The total available water power of all countries of Europe combined is 35,965,000 horse power, the development of which is rapidly progressing.

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Three great principal uses for electric energy await the development of our water powers:

The operation of pumping plants in connection with irrigation projects;

The electrification of railroads;

For manufacturing purposes in production of fertilizers, explosives and electro-chemicals, wood pulp, paper, iron, steel, etc.

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Irrigation. It is estimated that there are at least 10,000,000 acres of arid lands located in the far western states, lying above the reach of gravity water that can only be reclaimed through water raised

by pumps operated by the cheap hydro-electric power now latent and wasting in the various streams from which the water would be pumped. Thus the land, and at a lower level, the water to irrigate it, and the power to raise the water to the land are often all assembled at one point.

Given water, these lands will produce every fruit, vegetable and grain that is native to the temperate zone, and are capable of supporting a population of 2,000,000 people.

If capital can be safeguarded, it is safe to say that hundreds of thousands of water horse power will be utilized within the next ten years in connection with the reclamation of arid lands, and that in addition to what the government service will accomplish, hundreds of millions of dollars of private capital will be used for establishment of reclamation projects in connection with pumping plants.

Lands are being irrigated in twenty-seven states, and as far east as New Jersey and Florida and two western states have now nearly 5,000,000 acres of land under irrigation.

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Electrification of Railroads. Four hundred and fifty miles of the main line of the Chicago, Milwaukee & St. Paul Railroad, being the portion between Harlowtown, Montana, and Avery, Idaho, is now being equipped for operation by electricity. Quoting from the testimony given before the Senate Public Lands Committee in 1914 by John D. Ryan, a director of the Milwaukee Railroad and also president of the Montana Power Company, which will furnish the power:

> "The railroad will pay under the contract for power delivered over 450 miles of its road something like $550,000 a year. It is paying now for coal to operate its steam trains over the same line approximately $1,750,000, and they furnish their own coal from mines on their own road, and one-third of their equipment is used in hauling coal to themselves, whereas with electric power there is not any such waste. It will save coal in the ground, and an enormous amount of money, and will be utilizing an absolutely waste product."

Mr. Ryan also testified that the Butte, Anaconda & Pacific R. R. are paying $96,000 per year for electric energy to operate 80 miles of road as against a former cost for coal of $270,000, a saving of $174,000 annually.

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In view of the great and apparently sure economical success of the electrification of 450 miles of the Milwaukee line, it is almost certain that within the next ten years a majority of the railroads operating through the mountainous country of the far west, where hydro-electric power can be developed cheaply, will adopt electricity as motive power. Forty-eight thousand, seven hundred miles of railroad are now being operated in the states of Washington, Oregon, California, Idaho, Montana, Wyoming, North Dakota, South Dakota, Utah, Arizona, Colorado and Nevada. It is estimated that 10,000 horse power is needed to operate 100 miles of

single track, and therefore it would require 4,870,000 horse power to electrify all of the railroads of these states, or one-ninth of the total hydro-electric power possible to develop in the territory traversed by these railroads.

A great portion of the trackage is over mountain divisions, and the use of electricity in place of coal will result in great economy of operation, obviate the danger of forest fires, and by elimination of noise and smoke and through a more generous ventilation, which will be possible when the flying cinder need no longer be taken into account, will make travel far more comfortable than at present.

As the railroads consume 20 per cent of the total coal used for all purposes, the substitution of electricity for coal as motive power will conserve this enormous amount of fuel for future use and water power wasted from the beginning of time will be utilized.

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Production of Fixed Nitrogen. The greatest need for the development of our water powers is the imperative necessity, and it is a national necessity, that sufficient fixed nitrogen should be produced within the boundaries of the United States to meet its requirements.

Nitrogen comprises four-fifths of the atmosphere and is a constituent of all organized life and tissues. It is a colorless, tasteless, odorless, gaseous non-metallic element. We live in it; we breathe it; we eat it, and it constitutes a portion of our human frame. It is absolutely necessary to the existence of animal and plant life.

Without fixed nitrogen the earth would soon become an uninhabited desert waste. While the atmosphere contains an exhaustless supply of nitrogen, yet 90 per cent of the plant life that lives in it does not absorb it, and the remaining 10 per cent absorbs but a small proportion of that which it requires.

The world has been dependent for most of its supplies of fixed nitrogen upon the nitrate of soda beds of Chile, where, during some convulsion of nature at some remote past time, the soda absorbed quantities of nitrogen from the air.

During 1913 the United States imported 625,000 tons of Chilean nitrates, valued at $21,000,000, upon which the Chilean export duty was 60 per cent.

We thus paid to the Chilean government $12,600,000, which may be considered merely a part of the amount which the people of the United States pay for its policy of water power stagnation. In other words, the people of this country would be quite as well off as they now are if they granted a subsidy or bonus of $12,600,000 per annum for the establishment of the water power nitrogen industry in the United States.

The richest nitrate beds of Chile, however, will be practically exhausted by 1923; and were it not for the discovery of processes whereby it is now possible, with the aid of electric energy, to obtain supplies of fixed nitrogen from the atmosphere, the world would stand in

imminent deadly peril, and the perpetuation of the human race would be endangered.

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The governmental paralysis imposed seven years ago upon the development of water powers in the United States, through the restrictive interpretation of Federal laws, and through harsh regulations of Federal departments, is in effect; but that period has been one of great hydro-electric development in Europe, where over 1,200,000 water horse power has been utilized for the extraction of nitrogen from the atmosphere, while not a single horse power is being used in the United States for that purpose.

Hydro-electric nitrogen plants have been established in Norway, Sweden, Germany, Australia, Italy, Switzerland, France, Spain, Japan and Canada, but none in the United States. The nitrogen industry of Europe represents an aggregate investment of over $300,000,000; employs 50,000 people, and the annual value of its products and derivatives is upwards of $220,000,000.

In Germany, where practically all the water powers have been developed, a nitrogen plant is being built which will use 100,000 horse power, to be produced from cheap coal. England is seriously considering the development of 1,000,000 water horse power in Iceland to provide for her future supplies of nitrogen.

Thus, these other countries are ensuring their requirements of this great human necessity against the time when it will be no longer possible to obtain supplies from Chile.

It seems incredible that nothing has been done thus far toward the establishment of the nitrogen industry in the United States.

On account of our restrictive regulations, a great atmospheric nitrogen plant was established several years ago at Niagara Falls, Canada, instead of on the Coosa River in Alabama, where the builders would have preferred to locate it.

In anticipation of a change in our Federal water power laws, a company was organized during the winter of 1914-1915, which expected to build nitrogen plants in the south and on the Pacific Coast, which would have cost upwards of $35,000,000, but owing to the failure of the Sixty-third Congress to enact practical legislation, the attention of the organizers has been turned toward the development of Canadian water powers.

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The two largest and most necessary uses for nitrogen are in connection with the manufacture of fertilizers and explosives. Seven million tons of fertilizer, valued at $170,000,000 were sold in the United States during 1913, and for its manufacture over $40,000,000 of nitrogenous and other material was imported, most of which could have been made in this country, with the aid of electricity. The average amount of fertilizer used in the United States is 28 pounds per acre of cultivated lands, against 200 pounds per acre in Europe, with the following results:

Comparison of average yield per acre in bushels of crops in the United States and Europe:

	Wheat	Oats	Barley	Rye	Potatoes
Europe	32	47	38	30	158
United States	15	29	25	16	83

If our use of fertilizer had been equal to one-half of that of Europe per acre in 1913, 24,000,000 tons would have been required, of the value of $580,000,000, and in the production of which 12,000,000 water horse power must have been utilized, and the resultant increase of crop value would have exceeded $2,000,000,000.

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Careful and extensive experiments made in Germany have shown that by the addition of 156 pounds of nitrogen per acre, crops of rye, wheat, oats, barley and potatoes could be more than doubled, and that by putting 2,000,000 tons of nitrate into the soil, the additional crop obtained for the entire empire was 63,000,000 tons.

These figures show how important is the role actually played by nitrogen in the cereal production of Europe. The German farmer practically uses his land as an agent for transforming fertilizer into products, while the American farmer tries to get products out of his starving land, without feeding it sufficient plant food.

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The crops harvested annually in the United States abstract over 1,000,000 tons of nitrogen from the soil, and as the world's supply of combined nitrogen is increased only slowly and in small degree by nature, the soil of farmed lands is entirely dependent upon fertilizer for replenishment of the stock of nitrogen which it gives up in its yield of crops.

At the agricultural station at Rothamsted, England, wheat has been grown year after year, on the same land, for sixty-three seasons, without fertilizer, with an average crop return of twelve bushels per acre, while during ten years, the average crop on adjacent plats of ground receiving plant food each year was forty bushels per acre.

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The present method of manufacture produces a finished product containing but 12% of active fertilizer, and 88% of utterly useless material on which freight and haulage must be paid by the farmer; whereas, the electro-fertilizer product contains 60% of fertilizing material. By the electric process, not only is nitrogen obtained from the atmosphere, but phosphate rock may now be treated by electricity, instead of sulphuric acid, for extraction of phosphoric acid.

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The use of fertilizer has a most intimate relation to the cost of living, which has increased in this country at a much more rapid rate than it has abroad. The extraordinary increase in the cost of living in the United States has been principally in the cost of food products, while other items than foods have increased at only the general rate prevailing throughout the world.

From 1900 to 1910 the cost of foods in the United States increased 35%, and abroad only 15%. While

our population increased 21% during these ten years, crop production increased only 10%.

The rapid increase in food cost in this country can only be checked by increased crop production, just as food prices are held down in Europe through increase in yields per acre. The countries of highest agricultural development are the largest consumers of fertilizers.

The mutterings of strife for commercial supremacy between England and Germany were heard as far back as early in the nineteenth century, when the value of bones as a plant food becoming realized, the great German chemist Liebig was moved to say:

> "England is robbing all other countries of their fertility. Already in her eagerness for bones she has turned up the battle fields of Liepsic, of Waterloo, and Crimea. Already from the catacombs of Sicily she has carried away the skeletons of many successive generations. Annually she removes from the shores of other countries to her own the manurial equivalent of three and one-half millions of men."

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Explosives. Nitrogen, in the form of nitric acid, is the principal constituent of explosives, such as gun cotton, dynamite and smokeless powder.

We are annually producing about 250,000 tons of explosives valued at $40,000,000, and we pay $23,000,000 for the raw materials that enter into them, most of which are imported.

Had it not been for the discovery of the nitrate fields of Chile, the explosive industry, as it is known today, would have been impossible; and, as coal and minerals could not have been mined without the use of explosives, the development in mining and transportation, which have characterized the last half century, could not have been made.

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In case of war, we would be almost entirely dependent upon foreign nations for our supply of nitrogen for manufacture of powder, and would be practically defenseless unless we could obtain it from other nations. If the country, with whom we were at war, should be strong enough to seize the nitrate deposits of Chile, or to prevent shipments to this country, it would leave us helpless.

We would be forced to commandeer all sources of nitrogen, including fertilizer, and it might come about that some of our agricultural regions could no longer be devoted to food production, even though the scene of conflict never penetrated to them. The War Department is greatly concerned over this weak point in our national defense, and writers who are authorities upon the subject, from the military standpoint, urge the immediate development of our water powers, and establishment of atmospheric nitrogen plants, in order to ensure the production of our requirements of nitrogen within the borders of our own country; and they strongly recommend that the nitrogen plants be so strategically located throughout the country, as to be reasonably well protected against attack, in case of foreign invasion.

General William Crozier, Chief

of Ordnance, United States Army, recently said:

> "We are dependent upon foreign sources for nitrogen. Our problem of defense would be greatly simplified if we only possessed our own nitrogen supply." ÷ ÷ ÷

A recent statement showed that the stock of powder for small arms in possession of the War Department amounted to 200,000,000 rounds, which would only be sufficient in time of battle to last an army of 500,000 men eight days; further, that there is only sufficient ammunition on hand to fire all of our coast defense guns forty times, or continuously for about one hour.

The War Department has, for some time, been accumulating a stock of Chilean nitrate to provide for emergencies; but in time of war, it would produce only sufficient explosives to last for a short period of time.

Germany is shut off from supplies of Chilean nitrate for powder making, and if she had not developed her water powers for the purpose of obtaining nitrogen from the air the European War would be ended today and Germany beaten. But the German government has taken over all nitrogen fixation plants, and is operating them on a war basis, and thus is enabled to manufacture a plentiful supply of ammunition.

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Manufacture of Paper and Wood Pulp. One-third of the cost of manufacturing wood pulp and paper consists of the cost of power. The imports of these articles into the United States are growing at an enormous rate.

Sweden and Canada have been developing their water powers, and hence it is interesting to note the exports of wood pulp and paper from those countries to the United States.

	1911 Tons	1912 Tons	1913 Tons
From Sweden.....	84,378	107,884	130,693
From Canada.....	83,856	131,412	280,586

With the production of cheap electric energy, through the development of our water powers, the pulp and paper industry will come back to its own in the United States.

It is inevitable that the industry must spread westward, and that through the utilization of the water powers and the forests of the Northwest, these imports of wood pulp and paper will be displaced with products made in our own country.

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Manufacture of Electro-Metallurgical Products. While coal, coke and gas are principally used in the smelting and refining of iron and steel, and while one-fourth of the entire world's output of coal is used for that purpose, yet in 1913, 668,000 tons of steel were produced in Europe and 165,000 tons in the United States, through the use of the electric furnace.

In Alabama and Tennessee practically inexhaustible deposits of iron ore and limestone are located in the vicinity of great undeveloped water powers, and when the problem of making pig iron through the use of

cheap electricity is solved, in an economical way, the South will become the center of the metallurgical industry.

Students of the question believe that the use of cheap hydro-electric power, in the making of iron, will eventually bring about a commercial revolution in the leading nations. The United States, Germany and England produce seven-eighths of the world's iron.

Germany has already developed practically all of her water powers, England has but few, and the production of iron would, therefore, under these circumstances, pass into the hands of the United States because of its water powers and it would become omnipotent in the production of iron and steel.

In fact, these authorities believe that all industries which consume large amounts of mechanical energy will be forced to emigrate to countries where water power is abundant.

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Manufacture of Calcium Carbide. Over 200,000 homes are lighted by acetylene gas produced from calcium carbide, in the manufacture of which, at Niagara Falls, great quantities of hydro-electric energy are used.

Because of our restrictive water power laws, the American Carbide Company could not increase its production in this country, and is now building a plant on the sea coast of Norway, where it has contracted for the delivery of 80,000 horse power developed from water power, and expects to ship most of its product to the United States.

Electro-chemical products were reported by the last census to be made in thirty-four establishments, of a value of $18,450,000, consisting of abrasives, electrodes, calcium carbide, caustic soda, chlorates and such metals and alloys as aluminum, silicon, ferro-vanadium, ferro-silicon, etc.

There are many other large and constantly increasing uses for hydro-electric power which cannot be enumerated here for lack of space.

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With the abolition of our present faulty laws, and the enactment of practical legislation, great water power developments which have been held back for years would be undertaken on the Connecticut River, where the power would be used in operating the mills of New England; on the Tennessee and Coosa Rivers of the South, in connection with the manufacture of fertilizers, iron and steel; on the upper reaches of the Mississippi for public utility uses; and on the Columbia and Snake Rivers of the Northwest for irrigation and manufacturing purposes.

Through installation of power dams and of locks, these rivers would be made navigable for an aggregate of hundreds of miles further into the interior of the country, and it would be accomplished by private capital, without a cent of cost to the people, through government taxation.

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But while an enormous amount of water power is latent in our navigable rivers, a far greater amount exists in the non-navigable

streams flowing through the public lands and Federal reserves located in the Far Western States.

Here Nature has segregated her natural resources; the thirsty land awaiting irrigation with the water containing the latent water power washing its shores; the forests necessary to manufacture of wood pulp and paper lining the banks of the falling water; the limestone and phosphate needed for fertilizers and explosives located contiguous to wasting water powers.

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Backed by the necessary capital, men of business and of technical and scientific experience, who have made hydro-electric development their life work, as well as manufacturers of all of the great products for which the hydro-electric energy would be used, stand ready to undertake this vast commercial development as soon as our present impossible Federal laws are corrected to a fair business basis, under which practical men will give their time and capital will invest. (Applause.) ÷ ÷ ÷

To be of avail, Federal legislation governing water power development must be of a nature to protect the public interest, accord to the states their just rights, be fair and business-like toward capital, and place not a featherweight more burden on the operation of water powers located within the public domain than are borne by competing hydro-electric developments operating outside the Federal reserves. (Applause.)

There is no reason why these things should not be so co-ordinated as to protect every interest and bring results.

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It is thus apparent that there is vital and imperative necessity for promoting and encouraging in every way the development and utilization of the enormous quantity of energy latent in our streams and now wasting to the sea; a necessity in no way local, but national; affecting the farmer on the Kansas prairie and the resident of New York City just as much as the citizens of the states where the water powers are located.

It is necessary for the manufacture of ammunition for the national defense; necessary for the manufacture of fertilizers that the cost of living may be decreased through increase of crops; necessary for the electrification of railroads for the cheap carrying of freight, and to provide a means of rapid and comfortable transportation for the people; necessary to the irrigation of vast tracts of lands, meaning the building of thousands of homes on lands now silent; necessary to the establishment of great and entirely new industries in the United States, meaning the investment of hundreds of millions of dollars, the building of new cities and towns, and the employment of thousands of men and women; necessary if we are to maintain our commercial standing among the manufacturing nations of the earth; and finally, of vital necessity toward promoting the comfort, the welfare and the prosperity of every citizen of the United States. (Applause.)

The Secretary announced that he had received a telegram. The Chairman ordered that same be read, and it was read.

Arlington, Wash., Sept. 22, 1915.

C. C. Chapman, Western States Water Power Conference, Care of Multnomah Hotel, Portland, Ore.:

The Northwest Electric Light and Power Association at its Eighth Annual Convention passed the following resolutions which we desire read to delegates assembled:

"*Whereas*, the greatest natural resources of the West is its unfailing water power, at the present time in a large part undeveloped, and which, if developed, would be an example of true conservation of our natural resources through the saving in consumption of fuel which would thereby result; and

"*Whereas*, water power is cheapest form of energy and its greater use would be a factor in cutting down the cost of living and increasing comforts of the people of our communities; and

"*Whereas*, it is of first importance to the people of the Western States, wherein these water powers abound, that legislation be enacted to encourage capital to invest in water-power development; and

"*Whereas*, the central station companies in the West are already to a large extent dependent upon water power for the production of electricity, and as time goes on and this Western Region grows, as it must, will be in an increasing degree looking to the water powers on the government domain to take care of the growth, *therefore be it*

"*Resolved*, that we, the memmers of the Northwest Electric Light and Power Association in convention here assembled, recognizing that it is of prime importance to the development of the West that such legislation be passed as will make possible the ready financing of water projects, hereby respectfully call to the attention of the Congress of the United States the need of action looking to the passage of such legislation, and hereby direct the President and Executive Committee of the association to take steps to bring this important matter to the attention of the members of Congress of the Western States."

E. G. ROBINSON,
President Northwest Electric Light and Power Association.

ERRATUM.

On Page 38, the following was omitted, being the latter portion of the Report of Committee on Permanent Organization and Order of Business;

interruption of speakers and without debate, until such program has been completed. That at the conclusion of the set program all delegates and invited speakers and guests, to whom the courtesies of the floor have been extended be permitted to debate the matters before the Conference, and to reply to any speech that has been made. Each speaker to be limited in time to fifteen minutes, provided that such time may be extended by unanimous consent of the Conference. The last provision will not apply to formal addresses appearing on the program.

Sixth: We recommend that the courtesies of the floor of this Conference be extended to the members of the United States Senate and the House of Representatives, and members elect thereof.

Seventh: Whenever a vote of this Conference is taken upon

any question it shall be by delegate, each delegate present to have one vote.

Eighth: We recommend that the record of this Conference shall consist of the utterances on the floor of the Conference, and the official proceedings of the Conference, and nothing else shall be printed.

Ninth: We recommend that these rules be amended only by vote of two-thirds of the delegates present.

Your Committee respectfully recommends the adoption of the foregoing report.

W. LAIR THOMPSON,
Chairman.

Senator Thompson moved the adoption of the report. Motion duly seconded.

(Thursday Sept. 23, Continued.)

THE CHAIRMAN: We are favored this morning with the presence of Frank H. Short of Fresno, California. Mr. Short has been invited to read a paper entitled, "The Constitutional Aspects of the Ferris Bill." Gentlemen, Honorable Frank H. Short of California. (Applause.)

JUDGE SHORT: Senator Clark comes first on the program, and I would like to hear him read his paper first.

THE CHAIRMAN: Very well. Senator Clarence B. Clark will now address us. Gentlemen, Senator Clarence B. Clark. (Applause.)

SENATOR CLARK: Mr. Chairman and Gentlemen of the Conference. I was rather of the opinion that the Committee on Resolutions, having completed its work, as I understand it, would present its report to the Convention for consideration this morning. I am glad, however, that the opportunity has been given me to deliver myself of a few well chosen remarks, and I am glad that the resolutions have been laid aside for a little while. It is unfortunate for me that I have not been able to be present at all of the former sessions of the Conference, because I am a little at sea as to what has been said or what has been done, and of course I run the risk of repeating what undoubtedly has been said before, and much better said than I will be able to say it. I have in my pocket a little manuscript that I intend to inflict upon you, only perhaps as a basis of what I may say later on, if the spirit moves me. I beg your pardon for thus referring to manuscript, but there are some things that perhaps are better said if they are said deliberately and coolly, and not in the heat of debate.

When the Governor of Oregon invited me to come to this Conference I was not supposed to be a delegate. I was glad to have an opportunity to come to this Conference and to say how I looked upon this subject. And, while I know that this is primarily a meeting of Western men called for the purpose of considering what is the best course for the West to pursue in regard to the water power development, yet I felt that a word as to the general policy of the Government towards the West would be so closely related to the subject that a few general observations on the attitude of the Government to the West might not be inappropriate.

ADDRESS BY CLARENCE D. CLARK

United States Senator from Wyoming.

I think the pretty general notion is that what is called the West has not for the last few years developed and grown as under normal conditions we ought to have done, in view of our almost unbounded natural resources.

Coal, iron, water, farming and grazing lands, and in fact substantially all the sources of wealth and progress have failed to give that full stream of increased production which might naturally be expected and which should flow from sources so rich and bountiful. Hundreds of our streams are still flowing unvexed to the sea that should have been harnessed and set to work for man.

Vast reservoirs of oil and almost limitless fields of coal are still bottled in the earth or unscarred with the pick which for lo these many years should have bowed to the will and service of man in turning the wheels of industry and in lighting the fires of a million hearths.

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I am one of those who still believe that our land laws and other laws of the last century, designed in good faith for the benefit of the individual and the development of a new country, had in them much of virtue and a maximum of efficiency.

I am not one of those who think these laws too liberal, or that they would work to the disadvantage of the general public.

They were formed on broad general lines and the theory that a benefit to an individual or a community was a benefit to the country at large, and that a resource capable of beneficial use was, if allowed to lie idle, more of a liability than an asset. (Applause.)

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I am referring now not to special laws designed to meet particular cases, but to the general system begun in the early fifties and continued on up for many years, which invited settlement, encouraged capital, stimulated enterprise, and, in fine, built up a splendid inland empire of strong, independent and self-reliant citizens and land owners such as up to that day the world had seldom looked upon; a system that found its splendid results in such magnificent commonwealths as Michigan, Illinois, Wisconsin, Iowa, Minnesota, and all those sovereign states of the great central and western parts of our Republic—a system whose vital power lay not in the hope of pecuniary profit to the nation, but in the idea of so utilizing the resources of the country that every idle acre and power should be put into active production, and thus not only add tremendously to the general wealth of

the nation, but in that adding raise up and develop a citizenship that should best serve the nation in times of peace and prove an impregnable bulwark in times of stress or danger.

As a rule the most patriotic citizenship is that which is permanently anchored to the soil and the owner and not the tenant is the most patriotic and efficient upholder of the nation. (Applause.)

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It has been urged against this old system that it was made the cloak for fraud and extravagance and a despoiling not only of the national domain, but of all other resources of the great public land states.

I am not to be understood as being so simple minded as to believe or assert that all who took advantage of those early laws did so with a heart untouched by guile.

It would have been a miracle if such were the case.

Of course there were some lands fraudulently acquired.

Of course some mineral lands were unlawfully taken possession of.

Of course even water-power companies have acquired rights in ways that have been devious and which would not stand the light of day; these would be inevitable under any system; but out of it all has come a most abundant good, and the pity of it is that in this day the sins of the individual wrongdoers of a genation ago are being visited upon the devoted heads of the law-abiding citizens of today. (Applause.)

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Within the last twenty years there has arisen a zealous and busy cult which has taken upon itself the duty not only of protecting ourselves against ourselves, but of undertaking to say in effect that this generation shall not eat lest those who come after may not have a banquet spread; that our homes shall not be warmed for fear that coming generations may not be fully supplied.

I am not unmindful that we should not waste or destroy the bounties which lie all about us, but we must remind these over-enthusiastic gentlemen that unless this generation is sufficiently warmed and clothed and sustained, there will be few future generations to take advantage of the rich supplies now so strenuously sought to be horded with miserly care. (Applause.)

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I believe in placing a careful guard around our resources. I believe in holding to strict accountability, civilly and criminally, any men or set of men who, directly or indirectly, seek to acquire by the least exercise of fraud or deceit, any rights or claims whatever in the public resources of the nation; but, for one, I protest most strenuously against any system of administration that casts suspicion upon the just as well as the unjust.

He would be a bold and uninformed man who would assert that such a system has not prevailed to a very great extent; a policy that, seeking to aid the honest settler or enterprise, has as a matter of fact little by little come to look upon the seeker upon the public domain as at the best an interloper who, if not to be foiled absolutely in his

designs, must be hindered and beset at every stage of his endeavor?

The secret spy system; the special agent camped on every doorstep; the whole red tape business of making it more difficult and a well nigh hopeless task for any man or set of men to acquire rights, individually or collectively, are but illustrations of how those temporarily in power have sought with much success to impede the operations of the law, instead of assist those in whose interest the law was passed.

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This condition of affairs was not primarily brought about by those in authority. I have had, as I now have, the highest respect for those who have been called on to administer these great affairs in their earnest desire to properly fulfill the duties of their office.

But I have no confidence in or respect for those extreme theorists who apparently believe that the one supreme duty of a nation is to keep all things as they are; who would horde the nation's resources as a miser hordes his gold; who would forever hide in a napkin the talent that has been given them.

I have no use for a prodigal.

I think the younger son who left home with such a gay pride got exactly what was coming to him; but I have still less use for the miser. (Applause.) There is hope for the prodigal that he may repent himself and return to a respectable way of living, but the miser never lets go, becoming meaner and meaner and of less use to himself and humanity as the days go by. (Applause.)

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While I believe in all sincerity that the result of our early land laws did work out wonderfully for the good of the people and the nation, I still realize that the clamor of recent years has had its effect upon the public mind, and that it is a condition and not a theory which now confronts us. Time has wrought these changes, and although I have hoped that a return to sane legislation might be possible, I still am compelled to admit that unless some adjustment of the difference of views is made, then indeed have we fallen upon unhappy times for the West and its development.

The recent decisions of the courts to which we must all bow have shown some of us that views formerly held regarding the constitutional powers and authority of the executive and administrative officers of the Government are no longer tenable.

On the one hand have been held views regarding land questions particularly that were apparently unshakable.

On the other hand were practices in administration that were apparently irresistible, and we have had the pleasing spectacle of an irresistible force striking an immovable body, with the result that might naturally be expected: absolute inertia, or, what is worse, continual strife between governmental authority and practices and private enterprise. (Applause.)

Some solution of the difficult situation must be found or our started development must stop and the clock be set back indefinitely in our future well being and prosperity.

Just such conventions as these ought to be able to solve, in a measure at least, the problems by which we are confronted by suggesting some sane and common ground on which all interested may meet.

But to be effective such meeting must be on the basis of mutual respect, and confidence in the integrity of the others.

A view based on the assumption that all administrative officers are usurpers, seeking arbitrarily to bind hand and foot the industries of the West, will prove as inefficient for good as will the opposite view that the most secret report of a special agent who considered it his duty and safety to make adverse recommendations is more sacredly true than is the sworn statement of honest and reputable citizens.

On the one hand, I believe there must be less denunciation and more concession; on the other hand there must be more liberality and less suspicion. (Applause.)

I fondly hope that such a day is coming.

I for one am willing to take the chances in an endeavor to reconcile views that will break the apparent deadlock, and once more set the wheels moving; but such compromise cannot be made, in my judgment, if, as a basis, it shall be insisted that these public land states shall surrender at once and for all time the title deeds to their own sovereignty. (Applause.)

I do not think there is any question of the legal fact that the waters of a state are the property of the state. This is not only constitutional law, but it is statute law as well, and the right of the state to exercise dominion over inland and unnavigable waters as shall be best suited to the needs and necessities of that state cannot lawfully be questioned. The rights of the general government even over navigable streams are pretty certain and well defined.

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The discussion thus far seems to have been waged over the so-called Ferris Bill, which was introduced in and passed by the House of Representatives, and, with some amendments, reported favorably by the Senate Committee on Public Lands. This Bill, I believe, gives at least tacit assent to the view that the Congress of the United States or the executive department of the government has a superior power over the waters in our streams than has the state itself.

To even this implied exercise of power I cannot give my consent.

If the government of the United States has authority over the streams of the inter-mountain region and the West for power purposes, it will be but a short step until the same claim will be made as to its power for irrigation, domestic and other purposes; for such is the irresistible ambition to seize power and to exercise authority that the best of men when placed in position are prone to exercise that ambition to the fullest extent, and the prime purpose, as I look upon it,

of the Ferris Bill and of similar legislation started along other lines, is the centralization of power in the executive departments of this government.

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If the newspapers of yesterday correctly report speeches already made in this convention, it was stated publicly by a high official of the government that the power to control the water, and not the revenue to be derived from that control, was the main purpose of the bill.

And that is the objection to this whole system of governmental control. It is the idea that ambition or power is feeding upon itself, as jealousy is said to do and is reaching farther and farther and farther. Is that the object or purpose of the Ferris Bill?

I do not know if it is the opinion of others, but I know that it is a fact, if newspaper report is to be credited, that upon the floor of this Convention it has been asserted, by gentlemen high in authority with the government, that that was the purpose of the Ferris Bill. If the official was incorrectly quoted, my remarks do not apply.

But, in the discussion, as it was being held here, the question was raised as to the revenue which the government of the state should get from the levying of a tax upon the water power, and it was said that the purpose of the Bill was not to raise money for the government, but was to give the government control over the production of water power in these streams, and nobody who reads the Bill can question that fact.

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The insane desire to make good by the individual in office and the reaching out and grasping after power, no matter how well intentioned it is, is at the bottom of all of this. (Applause.) Who can tell where it will end?

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You have all heard, more or less, of Forest Reserves. You know what has been done in connection with them.

In the last four years enough Forest Reserve was taken from the public lands of the public land states so that if it were made into one belt that belt would reach from the harbor of New York City straight west beyond the City of Omaha. That is a concrete proposition.

More acres of land were included in the Forest Reserve in those few short years than would have made a strip two hundred miles wide, reaching from New York Harbor to the Missouri River at Omaha.

Those gentlemen who have not looked at the figures do not understand that. What does it mean?

Take down your geographies and look at the map. Instead of having this magnificent commonwealth up there 'way across the continent, New York, Ohio, Indiana, Illinois, Iowa, Michigan and Wisconsin would be the breeding places of wild animals and would be still the home of the Indian. That is something of an illustration of the way executive and administrative authority, if allowed to work their sweet will,

operate in this country of ours. (Applause.)

What think you the splendid cities of those states I have mentioned would say if the general government today should say, "We will reserve the forests along the boundaries of the great lakes and rivers for future generations?"

Who is there in all this land of ours that prays for the timber that was standing there a hundred years ago which was not cut off for building homes but which was cut off to be burned upon the ground in order that homes might be carved out where timber grew before?

I believe in the conservation of resources. I believe in the proper conservation of our forests, but I believe beyond that, that if there is only room on a spot of earth for a man and a tree I would let the man grow and cut the tree. (Applause.) But, that is far from the point, and I used that but as an illustration.

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The topic which I started to write about was the duty of the government to the citizens. We must acknowledge that there is a reciprocal duty between the government and a citizen. The government is the creature—it is the creation of the citizen *en masse*.

It is the duty of the citizen to lead an orderly life. It is the duty of the citizen to regard those laws and rules that are set around him in order that society may be protected. It is the duty of the citizen, in short, to be a good citizen and to so conduct himself as to cast no discredit upon the government, and in time of stress to give his life for it, if need be, to preserve that government.

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But, the obligation is not all on one side. It is the duty of the government, so far as it lies in its governmental power, to provide avenues for the industry of the citizen—it is the duty of the government so far as it lies in its governmental power to see that no law should be enacted which could deprive a citizen of an opportunity to better the condition of himself and his family.

I believe that in these last respects the general government of the United States has been remiss. I believe, as I moderately wrote, that it has not lived up to its duties in these latter years.

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It cannot be gainsaid that everyone of the gentlemen assembled in this hall—if any one of them should desire to take advantage of the law that was passed for his benefit and for the up-building of the country—if he seeks to take advantage of one of those laws, he is under the suspicion of some officer of the general government. (Applause.)

Of course, it is done under the guise that unworthy men shall not be allowed to take advantage of these laws—that fraud shall not be practiced, but the fact remains that no matter of how good repute you or I may be in our own neighborhood—no matter what reputation we may have among our neighbors, you and I although if we were called as two witnesses and as reputable men into court, (our testimony would be taken in any court of justice)—we would not be be-

lieved and our word would not be taken should we proceed under any of these laws and under solemn oath.

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Further, before an entry of any sort will be allowed to you or I under these laws, there will be a special examination of that entry by a special agent—and I am not going too far when I say that the report of that special agent, given in secret, goes farther in the ears of this general government of ours than does your sworn statement or mine.

I say these things are wrong and these things ought to be remedied.

I say further, that the testimony that is good enough in a court of justice ought to be good enough in an executive office of this great nation of ours. Applause.

I protest against this suspicion which is immediately assumed in the mind of every government official against the character and oath of any man who wants to take advantage of the government laws made for his benefit whereby he is looked upon immediately as having perjured himself and as having lost his character and good reputation from the very start. (Applause.)

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Now, gentlemen, I have said a good deal more than I intended to and perhaps a good deal more than I ought to have said, but I feel very strongly on these questions.

You may think that is not compromising talk, but that is one of the things that has got to be remedied before compromise can be made. (Applause.)

I will not enter into a compromise with any man who believes from the start that I am a criminal. (Applause.) That is one thing that cannot be compromised any more than the honor of your family can be compromised.

There must be a starting point where each has the confidence and esteem and respect of the other. There are certain fundamental principles that cannot enter into a compromise.

Right at present one of these fundamental principles is the control of waters in the state. I said that was not only constitutional law, but statute law, and it is law that goes farther back than constitional law or statute law.

It is the law of English-speaking men from the beginning—before the Constitution of the United States was thought of—before the independence from the mother country was thought of—that the colony of New York should have control of its own streams lying within its own borders and that the colony of Virginia should control its own streams, and to accomplish this there was no written law necessary.

This was embodied into the fundamental law of the nation. It has been embodied into the organic law of every state that has yet been created and admitted to the Union.

Upon every page of our history and of our laws is written the fact that the sovereignty over the streams of the commonwealth rests in that commonwealth, and none other. And I say to you that the government of the United States has no more right over the streams of non-navigable waters running in

my state than have you, Governor Hawley—and the government of the United States itself bows to that decree, because when it wants to erect one of its great irrigation works in your state or my own state, does it exercise the authority that is contended for by some of the gentlemen here and go and do it? No, indeed! It goes to the State Engineer and to the State Board of Control, just as we would go as individuals, and asks for an appropriation of that water for beneficial purposes, just as individuals would ask for it.

And the government of the United States when it makes a move without compliance with that formality or compliance with the state laws becomes a trespasser upon the property of the state just as you or I as individuals would be trespassers upon the property of the state.

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The government of the United States has no more right to the waters of the State of Oregon than it has to the State House itself. They are both the property of the state, the immutable property of the state, and cannot be disposed of except under the laws of the state, unless—unless power shall override right and law! (Applause.)

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The government of the United States has the right to let people fish and sail boats up and down this magnificent river. It has the right and the duty to keep it free for navigation and fishing purposes and that is all of the right it has got over navigable streams. As for non-navigable streams, it has no right whatever.

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Now, as to the crux of the whole Ferris Bill. It is designed to give the government of the United States control of the water powers of the state. That is the design of the constructors of the Ferris Bill, frankly and fairly and honestly stated.

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I saw criticism in the public prints—I do not know what went on yesterday, or the day before—but I saw criticism in the public press to the effect that this convention was called for the purpose of protesting against the Ferris Bill. I understand the convention was called by the governor and by the legislature of this state inviting the peoples of the various states interested to gather and to try and devise some plan by which the present embargo upon the power be raised.

The true purpose of this meeting was that the present embargo upon the power might be raised, but if the meeting had been called for the purpose of protesting against the Ferris Bill, there is a justification for every man here being present! (Applause.)

I say this because, in my judgment, no more insiduous assault has been attempted upon the rights of sovereign commonwealths in the West than is embodied in the very principles of this same Ferris Bill.

By the terms of this bill you give the government of the United States the right to control the water for power purposes. That is what the bill itself absolutely and

unequivocally provides for. I do not care whether they call it a license, or a tax, or a permit.

As a matter of fact, the purpose of the bill is to give to the government of the United States the right to control the waters of the states for power purposes. It says that any man who wishes to use the water flowing in certain sections of the country without a permit by the government is trespassing. Any private citizen wishing to use the water power of these streams flow ing through certain sections of the country must secure a permit to do so from the government of the United States.

The other purpose of the Ferris Bill is to provide that he shall not furnish water power except at such prices as his Government fixes upon it for him.

That is what I call control—absolute control in the government of the water powers of a state—leaving entirely nothing to anybody else but to the government of the United States. That is the prime object and purpose of the bill.

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I want to say to some of you granger people from the interior, who do not live on these navigable streams and who are not acquainted with the possibilities of the power to be developed from these sites—that the possibilities of development were well shown at the banquet last night.

If the government of the United States has control of the waters of the Columbia River it has control over the waters of the Snake and of the Bear Rivers, and also of the other inland streams in the Rocky Mountains. For, if you give them control, for power purposes—if you give them control, how long would it be before some other administrative official shall seek to gain control for irrigation and domestic purposes? (Applause.)

If you give the government control over these water sites you will find that a tax will be laid upon the waters that cover our great alfalfa fields. Because the logic is irresistible that if the government has control for any purpose, it has a right to control for all purposes.

We are not so simple as to believe that the right of control, once granted, will not be exercised to its fullest extent. There has never yet been authority conferred that has not been exercised but what there are plenty of patriotic citizens filling the offices of our government who are anxious to exercise it. (Applause.)

For that reason, I say, this Convention would have been justified in coming together upon a call for the sole purpose of protesting against the Ferris Bill. (Applause.)

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I have no harsh words to say about those who differ from me. Every man in this country of ours is entitled to his opinion and is entitled to a respectful expression of it.

I have no quarrel upon any man's opinion, but this is my point of view merely. I consider that the whole policy of centralizing all authority in the government of the United States, and gradually eliminating the sovereignty of the

states, is one wrong in theory and contrary to our institutions.

I am what the toastmaster last night called "A Jeffersonian Republican." (Laughter.) I am a Republican—or a Jeffersonian Republican—in that I believe that the general government has no right except those which are definitely stated and given to it in the Constitution of the United States.

I do not believe that when our fathers made and laid the foundations of this government in that great document, that they ever thought it was anything but a government of delegated powers. (Applause.) That is apparently an old fashioned notion. (Applause.)

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Oh! An old-fashioned notion! Apparently the Constitution does not enter in — except between friends! The letter of the Constitution is there, but we have been developing so fast that we have allowed, from time to time, our courts to add to the Constitution. It has been a sort of a rubber band that would stretch over any difficulty and that would take in almost anything, and I would say in regard to these land laws about which some of us are complaining today that more legislation has been enacted in the Department of the Interior and in the General Land Offices by the officials there, than has ever been enacted by the courts themselves. (Applause.)

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I am measuring my words when I say that!

More law that is now applicable to the great domain of our Western country has been written and put into operation by the Department of the Interior and the Department of Agriculture than have ever been acted upon by the Congress of the United States. (Applause.)

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That is one thing that I want to get rid of, and to stop. I do not want to give these worthy men any more power over this domain of ours than they have now. I am, therefore, opposed to the Ferris Bill, which recognizes the principal that the state has no right whatever which the General Government is bound to respect. To that I can never assent.

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I beg your pardon for having taken so much of your time. If I had had more time, I would have written that speech. I think the first part of it was the best. I am glad I came and I thank you for your attention. (Applause.)

SENATOR WALSH: There is no more fair-minded man in the United States Senate than the eloquent speaker to whom we have just now had the pleasure of listening. And I am sure that he would like to leave no erroneous impressions as a consequence of any remarks that he may have made in the course of his address.

I have been a very diligent attendant upon the sessions of this Congress since it convened. If there was any officer in the Gov-

ernment who asserted upon the floor of the Convention that the purpose of the Ferris Bill was to give the Federal Government control over the waters and the streams of the state, it must have been made in my absence. That could hardly have been, because I was with Senator Clark in attendance upon the sessions of the Committee on Resolutions at all times when he was absent from this floor, and this must have been before he came. I am sure, no doubt, that this impression will be proved to be erroneous and that the newspapers in the city of Portland that so quoted any Government official will be very glad to correct the erroneous impression made.

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SENATOR CLARK: I wish to say that I have not been present at all of the meetings of Conference, but that I read this statement in the newspapers. And the report I saw in the papers I find no fault with. I find no fault with the statement as to the purpose of the bill, but the statement, as I read it, was made that the purpose of the bill, in fact, was not for the revenue that might be derived under the bill, but was for the purpose of gaining control of the waters of the state. If that was not said, of course I take back all that I said. I think it was said. I think it was very properly said, because evidently that is the purpose of the bill. (Applause.)

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SENATOR WALSH: No doubt Senator Clark has quoted with entire accuracy what he saw in the newspapers. Newspapers in this matter are partisans, and the partisanship is shown by giving the unfair statement of what the officer of the Government alluded to and said. Senator Clark got this erroneous impression in that way.

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CONGRESSMAN HUMPHREY of Washington: Mr. Chairman, I want to take issue with the distinguished Senator from Montana when he states that in making that report the press was prejudiced and unfair. I heard the distinguished representative of the Government, Mr. Tallman, make his speech, and I will leave it to the audience whether or not he did not make the statement that Senator Clark said he saw in the newspapers.

(Cries from the audience: "He did. You are right.")

CONSTITUTIONAL ASPECTS OF THE FERRIS BILL.

Address By Frank H. Short of Fresno, California.

THE CHAIRMAN: Gentlemen, I now have the pleasure of introducing Honorable Frank H. Short of Fresno, California, who will talk to you on the subject, "Constitutional Aspects of the Ferris Bill." (Applause.)

Gentlemen, the Honorable Frank H. Short. (Applause.)

JUDGE SHORT: Mr. Chairman and Gentlemen: Gentlemen, the Chairman inquired if I desired any water while making this speech. If I do, I am glad to know that there is a Government Bureau here from which I can get a permit. (Laughter.)

I am glad to say that you, gentlemen, will have an easier time in connection with the short address that I expect to make than if I had spoken a short time ago. When I was invited by the Governor of Oregon to make these remarks upon the constitutional aspect of the Ferris Bill, I expected to go into the matter rather fully.

There has been so much said, and it has been so well said, that I think that you and I can get together if I do not use my written speech, but ramble along and discuss this situation informally—I think that we can discuss it very much better if we speak impromptu and in a friendly way than if I read to you and gave you a set speech. If I talk to you in a rambling way and leave my set speech alone I may get through sooner and also you will have the satisfaction of knowing that when I do get through this Conference will have closed to formal discussion of this great question. (Laughter.)

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Ladies and gentlemen, a constitution—especially our own Constitution—is supposed to be the first word and the last word, in all constitutionally governed countries, but, when we, in this country, struggle for the enforcement of our Constitution, we need not delude ourselves with the idea that our position is peculiar. It is peculiar only in that we struggle to enforce our Constitution and that other so-called constitutional countries pay but very little attention to theirs.

Our friends who believe that the Constitution of this country ought to be construed as of little weight have many friends in other countries. Take, for instance, our neighbor, the Republic of Mexico. That country is in no "constitutional strait-jacket" that hurts! (Laughter and applause.)

I remember about two years ago

I heard the then most illustrious citizen of the world, our ex-president, give his views on constitutional construction in this language.

He said, "I believe in the fact, and not in the word. I care for the fact, and not the word. I am for the people's rights. Where the people's rights mean the rights of the Nation, I am for the rights of the Nation; where the people's rights mean State's rights, I am for the State's rights."

Notice he says, "I believe in the fact and not the word."

I do not know whether our illustrious ex-president expected to bequeath this right of constitutional interpretation to his children or not, (laughter) but I do know that this theory prevails in other countries. That is to say—not what the Constitution says, but what somebody having prestige wishes that the Constitution shall say. Whatever he wants the nation to do he construes the Constitution so that it can be done regardless of its words.

And if the Nation wants to do a certain thing, and if, in the opinion of some illustrious interpreter of the Constitution it ought to have the power, then the Nation may do it, the Constitution and the law and letter of the law to the contrary notwithstanding. (Laughter.)

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Down in our neighbor republic to the south they have a constitution that was copied after our own.

It is perhaps a little more ornate and a little more beautiful in its language than ours—(applause)—also they have a president and a congress and a supreme court. Not that I have heard from the supreme court for a long time, but they have one. (Laughter.)

And they have states—not that I have heard from the states for a long time, except that one revolutionist had possession of a state or that another had taken it away from him—but they have states down there also.

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Porfirio Diaz did not believe *in* the word of the constitution. He was for "the people's rights."

And then came along Mr. Madero who did not believe in the words of the constitution of Mexico, but he was for "the people's rights" —until he got his. (Laughter.)

And then came Victoriana Huerta, who was a gentleman that did not believe in the words of the Constitution of Mexico, and he did not believe in anything else except military force, and Huerta is now in an American jail realizing that there is some sort of a Constitution in some other country. (Applause.)

Then, Mr. Carranza, being some lawyer himself, believes that there is a Constitution, but he believes that it was made for his own uses and that he may construe it as may seem best to Carranza when he needs to make use of it.

Then there comes a Mr. Villa and he is for "the people's rights"—and pretty nearly everything else in Mexico. (Laughter.)

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Then, down in Haiti they have a Constitution and over in Santo Domingo they have a Constitution —of a different color, (Laughter) but it is about in the same language.

In each and every one of these countries they have very much the same thing in their constitutions and they are all alike in this respect—that they disrespect their constitutions. (Applause.)

Even our ancient and honored friend, the Empire of China, claims that it is a Republic and that it has a constitution. It is not very old as a Republic and its constitution hardly has the ink on it dry and yet it is not working. Mr. Sun Yat Sen's sun has set, and Mr. Yuan Shi Kai is now the Constitution of China. (Applause.)

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A great deal more interesting to me than the question of the development of any horse power, or the question of the construction of any canal, or the construction of any public highway in the United States—although those things are of undoubted importance—is the question as to whether or not this world has developed a people so enlightened and so free and just that, at last, in the history of the world, they are not only equal to declaring, but maintaining, a constitutional government for all time. (Applause.)

My friends and adversaries say that Frank Short is an undue worshipper of the Constitution. It happened about ten or twelve years ago that I was representing people who desired to irrigate certain portions of the State of California and who desired to develop power with which to supply energy, heat and light, and pump water for irrigation purposes, and in the course of my business I found my way to Washington, and I found that there had been introduced in Congress some proposed laws that appeared to me to be fanciful in the way of governmental legislation in connection with the use of the public lands.

I admit that I was but a small "rube" lawyer from a country town, (laughter) but even then I knew that no such legislation could rightfully be passed by the Congress of the United States. Never having been a politician, I knew then that there was no rightful authority in Congress to exercise its legislative authority through and in connection with the public lands.

I then knew that if the rights of the states were to be respected, the United States Government must exercise its authority only through the Constitution of the United States, and that it could not rightfully exercise its governmental authority through the subterfuge or under the guise of regulations applicable to the public lands.

The Constitution of the United States was good law when it was adopted, and it is my doctrine that it is just as good law now.

Permit me to suggest to my friends who are claiming that the Ferris Bill does no violence to the constitutional principles of our government that there is a very easy and direct way out of our dilemma.

The United States Government is admittedly a trustee proprietor of the public lands, and except for the regulation of the uses of these lands it has no other duties of government to perform in the public lands states, except those that should

equally affect the non-public lands states. Therefore I make this definite suggestion, that all legislation that is passed concerning the public lands shall relate solely to the regulation and use of these lands for the purposes of their disposition and use and for purposes of rights of way and other public necessities. This is undoubtedly designed and intended by the Constitution.

Then strictly adhere to the rule that all laws for the regulation of industry, the prevention of monopoly, the acquisition of property for public uses or purposes, and all and every character of municipal legislation by the United States, shall be passed as separate legislation and not in conjunction with or affected by the public lands.

When this is done the United States can pass laws with equal effect and equally operating in all the states and likewise equally operating upon all American citizens.

If municipal legislation is needed in the public lands states, and if the United States Government has the constitutional power to pass the same, it is equally needed in the non-public lands states, so that it is clear enough that all governmental-municipal legislation should be passed with relation to their general applicability throughout the United States, and in no manner confined to the public lands states.

In this event there can be no question of the uniform operation of the laws of the United States or the equality of the states or of equal citizens. And if there is any question as to the constitutionality of any such laws, they will relate to the whole country and to each and all of the states and to each and all of the citizens of the United States, and all of us must agree that this is consistent with our form of government and consistent with the general welfare.

When this is done, the states of Oregon, Colorado, Montana, Massachusetts, New York and Alabama will be in all respects equal, and the citizens of those states will be equal citizens of the United States.

Any legislation of a municipal nature passed by the United States, in conjunction with the public lands or in conjunction with laws, rules and regulations affecting the public lands, is upon its face an effort to adopt unequal laws to operate in certain states and not in others, and to affect certain citizens of the United States and certain industries and public agencies, and not others.

If you will only think this over, my friends, you will realize that there is a very easy way to settle this matter. Separate your legislation, confine your rules and regulations of the public lands to one set of laws, and adopt all governmental and municipal legislation separately, and all of our problems will be solved.

Forget this subterfuge that you are a landlord government, and try to remember that you are only a constitutional government, and that the United States is engaged in managing land in accordance with the constitutional power given to it to regulate proprietary uses thereon, and do not attempt through and in conjunction with public land

laws to coerce the states and the citizens of the states wherein they are situated through laws of the United States that could not be adopted under the Constitution. (Applause.)

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Before further discussing this subject I would like to say a few words to mitigate the grief of some of our friends and adversaries at this Conference.

It has actually been suggested by both Senator Chamberlain and Senator Walsh that there has been discrimination in the arrangement of this program and in the denial of free speech on the part of those who favor the Ferris Bill. In answer to this it may be pointed out that five of the most distinguished men in the United States, including the two senators referred to, and three officials of the Federal Government, have been invited and have accepted invitations to speak here, and have done so, and yet we are told that they have not been accorded a hearing, and that free speech has been denied.

In contrast with this situation, and in mitigation of this sorrow, I wish to call attention that only a few years ago when I attended the Conservation Congress at St. Paul the situation was very different.

That conference was under the complete control of the conservationists of love and light under the ministration of my winged friend, Mr. Gifford Pinchot. On this program, Senator Walsh, there was not a single representative speaking for the western states, nor was any speaker permitted to speak on behalf of the western states except myself, and I got on the platform only after a riot. (Laughter and applause.)

The children of conservation at that conference would hear no one except upon their own side. Finally, however, it was insisted by a number of governors of the western states that at least some humble person like myself should be heard and allowed to deliver at least one short address. At first they protested and refused even that privilege, but finally assent was given only after it was stated that the denial would be given to the Associated Press and sent over the country if no one was permitted to speak for the western states.

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I shall never forget the introduction that I received from the chairman of that meeting. I have tried to forget it, but I have never been able to. (Laughter.)

He introduced me in about these words: "My friends, the American people always listen to those with whom they disagree. The next speaker will be strictly limited to fifteen minutes, and the time will be called. (Laughter.)

You will notice that it was his idea that the American people always listen to those with whom they disagree for fifteen minutes after listening to those with whom they do agree for about fifteen hours.

On the second when the fifteen minutes were up, the chairman brought down his mallet on my defenseless head as ruthlessly as

Charlie Chaplin is knocked out in the movies. (Laughter.)

However, be it said to the credit of the Americanism of the audience, that about 2,500 of them got up and "canned" the wielder of the mallet and insisted that I had a right to finish my address, which I did in a very few minutes.

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Now, I sincerely trust that my friends on the other side will feel better about the alleged denial of free speech at this Conference.

The truth of the matter is that they had been so accustomed to doing all of the talking and that consequently they had become very brilliant talkers but very poor listeners, and they think that free speech consists in their right to do all of the talking and those who disagree with them to do none of it at all.

In the course of my address at St. Paul referred to, I referred to the situation and argument, and I again refer to it here, that in nearly every conference on this subject I have attended in the eastern states, the watchword of the conservation speakers was that "The remaining resources of the nation should belong to all of the people of the nation and should be administered for the benefit of all of the people of the nation."

In western conferences and conventions the slogan has been that the remaining resources of the nation should be administered for the exclusive benefit of the public lands states.

Just how the remaining resources of the nation will be administered so that they can be of great profit and benefit to the eighty per cent of the people living outside of the public lands states and so that they will in no manner become a burden to the twenty per cent that do live in those states, has never been explained.

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Just how this mighty national asset and great resource can be managed for the benefit of all of the hundred million of our people and the eighty million of the people living outside of the public lands states can be greatly benefited and the revenues improved without imposing any burdensome charges upon the twenty million within the public lands states is never explained.

It has been found quite sufficient to promote the policy in the East upon the theory that it is for the benefit of all the people of the nation, and in the West it is the slogan that this development is exclusively for the benefit of the people of the public lands states.

We assume that Uncle Sam is the father of four sons, and for the purposes of historical and geographical accuracy we refer to them as East and North and South and West, and Uncle Sam, being mindful of a trust and generous to a fault, has proceeded to distribute to East and North and South, who are the elder children, that portion of his magnificent estate and domain that pertained to them. Whether this was done wisely or otherwise, we are not here discussing. It is sufficient to say that it has been done, and that at the time it was done

that portion of the common property that pertained to the estate of the younger brother West was supposed to be of little value.

But the younger brother, being resourceful and industrious, has demonstrated the value, the potential power and the taxable resources of his left-over and supposedly arid portion of the public domain. It was not until this situation developed that a great idea of regeneration and moral uplift seized the minds of East and North and South, and the more they thought about it the worse they felt about it.

Finally our brethren went to Uncle Sam and said, "Father, in the distribution of that portion of your estate which you had distributed to us and to our children, you have greatly impoverished the family estate and inheritance, and you have sinned against Heaven and in the sight of all men, and we can suggest no adequate atonement or reparation except that you shall now seize, take and hold all that portion of your estate that was supposed to belong and descend to our younger brother, West, for the benefit of the whole family." (Laughter and applause.)

If there are any conservationists present who desire to deny the geographical and historical correctness of the above parable, they are now invited to express their dissent or hereafter forever hold their peace. (Laughter and applause.)

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It was about the time when this eleemosynary uplifting program had assumed the proportions described that your humble servant concluded that it was time to dig up the Constitution of the United States and break the will (applause) under which Uncle Sam was supposed to have bequeathed to his three elder sons, North, East and South, the portion of the inheritance that by natural right descended to West, the younger son.

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In the addresses that have preceded my own in this Convention it has been asserted that nothing unconstitutional is contained in the Ferris Bill. Upon the other hand, it has been asserted that the officials of the Federal Government do not desire revenue, but they desire control.

Just how any separate governmental control can be exercised in the public lands states and over the citizens resident in those states and not in the other states of the Union or over citizens resident therein, cannot, I think, be very well explained.

Our friends and adversaries, when we assert the constitutional right of equality, say that the Constitution is a straitjacket preventive of free action on the part of the American people. Well, if the Constitution of the United States is a straitjacket, I think it would fit some of our friends on the other side. (Laughter.) In fact, I think they would look much better wearing a strait-jacket than they do trying to evade the Constitution of the United States and accomplish the result of making the public lands states unequal with the other states of the Union. (Applause.)

There are two ways of escaping the provisions of the Constitution. One is to evade it or violate it, the the other is to amend it.

The real reason why so many more people prefer to violate the Constitution than to amend it is that when they violate it the violation only affects the other fellow, and the Constitution still stands to protect those who prefer to violate it, except when their own constitutional rights or interests are involved.

They have frequently said: "You are too old-fashioned. Why don't you bring your constitutional construction up to conservation?" My reply to this argument is, bring your progress and conservation up to the Constitution, and then you and I will agree and be happy ever after. (Applause.)

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It is proposed that the legislation embodied in the Ferris Bill shall be enacted, not by amendment of the Constitution, but by an evasion of it, and under the guise of and through the public lands.

Upon the face of the Ferris Bill it cannot be denied that legislative power and authority is there attempted to be asserted in conjunction with the public lands that the United States could not pretend to exercise separately from the public lands and under its constitutional grant of authority.

Therefore, if, instead of proposing to evade and violate the Constitution, we propose to amend it, we would have to insert a paragraph that would read substantially as follows:

"The states of this Union shall be absolutely equal, and every citizen of the United States shall be upon an absolute equality of right with every other citizen; *except and provided*, however, that in those states where there are public lands—that as to such public lands states and the citizens of the states who desire to use or enjoy privileges over the public lands states, the United States Government may exercise such exceptional and unusual powers in those states and over the citizens of those states and the industries therein as in the judgment of the United States may be appropriate and beneficial."

If you would not favor amending the Constitution of the United States in that way, upon what theory do you support the Ferris Bill that seeks to accomplish the same purpose by indirection and without amending the Constitution? In supporting the Ferris Bill you are advocating a violation of the Constitution to the same effect without amending it. (Applause.)

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It is not my purpose or intention to turn this address into a brief. In the former address which I had prepared to deliver at this Conference and which I have abandoned, I have cited a number of decisions from the Supreme Court of the United States. In view, however, of the nature of this address, I will content myself by quoting from a case already several times referred to in this convention, and usually referred to as Pollard's Lessee,

(*Pollard's Lessee* v. *Hagan*, 3 How., 212; 15 U. S., 391).

In that case the Supreme Court of the United States said:

> When Alabama was admitted into the Union on an equal footing with the original states, she succeeded to all the rights of sovereignty, jurisdiction and eminent domain which Georgia possessed at the date of cession, except so far as this right was diminished by the public lands remaining in the possession and under the control of the United States, for the temporary purposes provided for in the deed of cession and the legislative act connected with it. Nothing remained to the United States, according to the terms of the agreement, but the public lands. And, if an express stipulation had been inserted in the agreement, granting the municipal right of sovereignty and eminent domain to the United States, such stipulation would have been void and inoperative, because the United States has no constitutional capacity to exercise municipal jurisdiction, sovereignty or eminent domain within the limits of a state or elsewhere, except in the cases in which it is expressly granted.

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This wholesome and unanswerable doctrine has been reasserted and re-decided many, many times by the Supreme Court of the United States, and if any interested person has any doubt as to the law as decided by the Supreme Court of the United States consistent with the above quotation, I will supply any such person with a brief wherein are cited ample authorities.

You will observe that in the quotation which I have read it is stated that the United States has no constitutional capacity to exercise municipal jurisdiction, sovereignty or eminent domain within the limits of any state or elsewhere, except in the cases in which it is expressly granted by the Constitution.

In the Ferris Bill there are many repeated and deliberate attempts to exercise municipal jurisdiction, sovereignty and eminent domain within the public lands states, where there could be no pretense of constitutional authority to exercise the same in any other state. A little later I will refer more fully to certain provisions of the Ferris Bill that definitely offend against the Constitution of the United States in each one of the respects and particulars above referred to.

I shall content myself here with referring to one of the features of that bill that seems peculiarly absurd and unconstitutional. That is, that the United States, having permitted the use of rights of way on the public lands for the development of electric power, can later itself take over and operate all of the connected properties of the company and carry on the public service. Such an attempt on the part of the United States seems peculiarly absurd to me.

I can understand how others differing from me on economic subjects and public ownership, might advocate such a policy that the great states of Oregon and Washington might unite and in their governmental capacity develop their water resources, including the harnessing of the Columbia River. I do not like to digress from my subject, but I cannot mention the Col-

umbia River without expressing my admiration.

I have seen a good many of the great rivers of this world, and I am now well satisfied that there is not in all the world any other river so fair, so beautiful, and so magnificent as the Columbia. And that is some admission to come from a Californian. (Applause and laughter.)

To revert to my subject, I can understand how advocates of public ownership might think that the states themselves could beneficially develop their water resources and beneficially operate the public service of generating and distributing electric power.

But how any American citizen with a speaking acquaintance with the Constitution of the United States could advocate the idea that the United States Government itself should engage, or could engage, in such an industrial public service enterprise within a state, is the subject that puzzles and bewilders me.

The United States is a great constitutional government created for the common defense and general welfare, and its powers and duties are strictly limited to those granted in the Constitution.

It would appear to me that any American who would advocate the idea that the United States itself should engage in local industrial enterprises and business was not really an American at all.

No person living could have a greater respect for the United States of America as a government than I have. This admiration is greatly enhanced because I regard it as a great instrument of government created for great governmental purposes and for the common use of many states, but having no other interest or purpose to serve than the common defense and general welfare of all of these states.

To have such a government as this descend to the mere occupation of manufacturing, selling and distributing electric power would seem to me to be a decadent and shameful thing. If we continue in this direction much farther somebody will be advocating pretty soon that the United States ought to reserve the privilege on the public lands of selling candy and Teddy bears to babies and running moving picture shows for the entertainment of grown-up children.

In the State of California it is the law that no public service corporation can sell or agree to sell any part of its property without the consent of the state expressed through the Railroad Commission of the state.

In the Ferris Bill it is provided that in conjunction with any use of any right of way over the public lands for electric power purposes the lessee must agree, as indicated, to transfer and convey all his properties to the United States or other successor named by it and no rights over the public lands, after the passage of the Ferris Bill, can be obtained without the agreement that the lessee shall bind itself to do what the law of California expressly prohibits it from doing.

And yet we have been told over and over again that the Ferris Bill does not interfere with the rights of the states. If we should take out

of the Ferris Bill all that does really interfere with the rights of the states, there would be nothing visible left in the bill. (Laughter.)

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The distinguished senator from Oregon has come before this Conference and advocated this invasion of the rights of Oregon and other public lands states, evidenced by the Ferris Bill, upon the theory and ground that it is necessary for the control and regulation of monopoly.

If all of the powers of government of the United States, exercised under the Constitution, and all of the powers of the State of Oregon, exercised under its Constitution, are not sufficient for the regulation of business and monopolies in the State of Oregon, then we should not take refuge behind the public lands but should see to it that the Constitution and laws of the nation and the state are made equal to the protection of the people from monopoly, and if they are not now equal and if they are not made equal to that task, we would get but little relief from asserting control over only those industries that happen to operate on the public lands.

For myself, I would be ashamed to live in an American state that is not the equal under the Constitution with every other American state.

The senator from Oregon says that his father was a Southern man and that he had been born in the South. I like Southern people. I am a Missourian myself. (Laughter.)

While up North they deny us as Northerners, and down South they deny us as Southerners, I still feel that we have an interest in the affairs and opinions of both sides. (Laughter.) We are told by the senator from Oregon that his father endeavored to establish the doctrine that this was a destructible Union, and I am sure that the senator from Oregon is now glad that he did not succeed.

My father was one of those who taught the father of the Senator from Oregon that this was an indestructible Union. And I sincerely hope that the Senator from Oregon will live long enough so that he will get right on some question of constitutional law, and not stand first for the destruction of the Union and then swing over to the destruction of the states. If he stands here and asserts that the states in their equality can be destroyed, the son of a man who assisted in teaching his father that this Union was indestructible stands here to tell him that these equal states can never be destroyed. (Applause.)

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The Senator from Oregon also complains that great areas of land in this state have passed to the railroads and Weyerhausers and others better known to the Senator than to myself.

Doubtless the Senator is right in complaining that undue grants of land have been made within this and other states. But allow me here to remind him that every acre of land in the State of Oregon owned by any railroad or by any corporation or by an individual, no matter how extensive, is subject to the jurisdiction and control of the State of Oregon, or any other state in

which it happens to be situated. And that every acre of such land is subject to the taxing power of the state and to its power of eminent domain for the construction of roads and highways, railroads and other means of communication, and of canals and aqueducts, and other appurtenant structures for the development of the state. (Applause.)

I now pause to inquire if the Senator from Oregon is not desirous of setting up in this state a perpetual landed proprietor whose lands shall remain forever exempted from the taxing power of the state, and also from its powers of eminent domain, so that they may be closed to the development of the state or allowed to be used on such unequal terms and unequal charges and unequal control of the Federal Government as the proprietor of such lands may desire to exact, including the power to close them to any taxation, use or enjoyment whatever?

Does he desire to establish an unassailable, immovable, arbitrary power of that kind in this state? (Applause.)

I quite agree that the United States can be trusted, and I assert that the states can be trusted, but I would not trust the Nation and I would not trust the State, and I would not trust any government with sectional, unequal or arbitrary power, such as is sought to be exercised and enjoyed under the Ferris Bill. (Applause.)

In short, I believe in a government of law, and not of men or of land. (Applause.)

I freely trust the United States when it is engaged as a just government exercising equal powers over every section of the country and over every state of the Union—exercising the same powers in Oregon that it exercises in Massachusetts, levying the same taxes, collecting the same revenues, asserting the same authority and giving the same protection. But I would not trust this government or any other government in the exercise of unconstitutional, arbitrary, exceptional or unequal power. Would you? (Applause.)

Nevertheless, that is exactly what is proposed to be done under the Ferris Bill, and no man can successfully deny it. If it is not such a law, then make it applicable only to the use of the public lands and put all of the governmental provisions of the Ferris Bill into a separate law applicable in all of the states and throughout the United States, and then observe if anybody advocates or tries to pass it.

The very fact that its advocates insist in embodying in this law pertaining to the public lands provisions for government and the exercise of municipal authority proves that it is sectional, unconstitutional, and ought, if passed, to be declared unconstitutional and void.

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In the Ferris Bill it is provided that the Secretary of Interior is not to grant a lease or permit any use of the public lands unless in his opinion such use is compatible with the public interest.

Do you think that any authority ought to be granted to an official of the Federal Government so that

he could say to the people of the State of Oregon, or to the people of any other state, whether they could enjoy their own resources or not, or whether their own interests would be served by a certain development, and yet this is exactly what the Ferris Bill undertakes to do in one of its most definite paragraphs.

For myself, I say that the United States is a trustee proprietor of the public lands; that it should not and cannot exercise any power within any state where there are public lands that it should not exercise in a state where there are no public lands. (Applause.)

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The gentlemen on the other side have said, "Why do not you people opposing the Ferris Bill suggest something concrete and definite?"

For myself, I am speaking inside out. There is nothing that I think that I am not prepared to say, and my position and policy is very clear. That is that the legislation of the United States concerning the public lands should be confined to the public lands and should adequately protect its proprietary interests in those lands and reasonably regulate, but not interfere with, or prevent, uses thereover. And that it should continue to give to the states and the people of the states the privileges and uses that have been enjoyed in four-fifths of this nation from the foundation of the nation.

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The gentlemen on the other side are constantly referring to corporation lawyers, and they seem especially to enjoy directing this reference to myself.

Here and now I admit that for a good many years I have been committing the offense of representing a good many persons and a good many corporations who have been endeavoring to commit the heinous offense of devoting their brains, energy and efforts to the development of the resources of the western states under the laws of the western states.

But no man can truthfully assert that I have ever advised any man or any corporation to evade or attempt to evade the Constitution or laws of the United States, or of any state. (Applause.)

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It is asserted that there have been many abuses in connection with the disposition of the public lands.

In this connection I submit that we are talking and thinking in one direction, while the subject we are considering is entirely in another direction.

It may be conceded that there have been abuses in connection with the granting and disposition of the public lands.

But we are not here considering any question of granting or disposing of any public lands. We are considering only the right of the states and their authorized agencies to enjoy necessary easements and uses over the public lands.

We have heard many objections to the grants of areas of land that have been made to the railroads, but I have never heard one objection to any grant of any right of way, even to railroads.

None of us have ever heard any

objections to the operations of the Act of 1866.

There is not a single right of way for a public development on the public lands that can be criticized or that would now be revoked. There have never been any rights of way for canals or other uses taken or enjoyed under the Act of 1866 that anyone ever did object to when it was taken or that could now be criticized or that any sane person would seek to have revoked.

If there ever have been any abuses or practices prejudicial to the people connected with the use of the rights of way over the public lands, will our friends please be specific, and will they please point out any right of way over the public lands under the Act of 1866 or otherwise that is objectionable or that has been objected to.

Where rights of way are granted or enjoyed over the public lands, the developments resulting therefrom increase the value and improve the salability of the public lands, and when they are disposed of they are disposed of without deduction of such rights of way and are more readily disposed of for the same price than would be the case if the uses had not been located thereon and thereover.

Under the laws of Congress these rights of way have been used as they ought to have been used, and what I here and now assert is that wherever the people of the state desire to develop their resources, and wherever any ways or easements are required for roads or highways, railroads, telephone or telegraph lines, or any canals, aqueducts, ditches, or transmission lines, they ought to be freely given and freely enjoyed, and the development of the states and of their resources should be had in the interest of and for the benefit of the people. (Applause.)

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I respectfully invite our friends and adversaries to quit talking about railroad grants, Alaska coal fields and other alleged abuses in connection with the disposal of the public lands, and to discuss with me the question of rights, uses and easements over the public lands, which is the only question pending before this Conference.

It may be quite true that if the United States Government desires to do so it has the power to exact reasonable compensation for the use of the lands occupied by the states and agencies of the states for ways, uses and easements. This would be unfair, unequal and without advantage, but we may assume that the power exists.

But when the United States undertakes in connection with uses over the public lands to extort and exact unequal government, unequal authority for its departments and bureau heads, or in any way to exact any unequal charges over the public lands or for their use, then I assert that any such attitude is unequal, unfair and unconstitutional. (Applause.)

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It is asserted that the heads of these bureaus should exercise this power in the public lands states for the benefit of the public lands states. Well, if the people of the states in

which there are no public lands can govern themselves, I see no reason why the people in states wherein there happens to be public lands cannot govern themselves equally well.

I have heard of people being drunk with power, and it does appear to me that some of our friends are inclined that way. I understand that it will pretty soon be the law that if anybody in Oregon gets drunk they will have to get drunk on power. (Laughter.)

The able and brilliant senator from Montana has inquired if we are going to organize a revolution.

I hardly think so, and hardly think there is any necessity for any suggestion of that kind. There will be no revolution, nor will there be any need of a revolution, for the reason that the Constitution of the United States is still the supreme law of the land and the Supreme Court possesses the power to declare and enforce the law. (Applause.)

Some of my friends think that I am so opposed to the use of water under any departmental restrictions that if it should be held by the Supreme Court that we can use water only under departmental regulations, I may abandon the habits of a lifetime and assist in voting the state wet and taking my first drink of whiskey. (Laughter.)

I now wish to call your attention in a definite way to a few of the provisions of the Ferris Bill that in my humble opinion are directly violative of the constitutional rights of the public lands states, and that are not only unconstitutional, but are wrong in principle and bad in policy.

First, a limitation of the period during which the right of way may be used to fifty years.

This is a clear attempt to interfere with the power of the state which can be clearly exercised by any state not having public lands, and by states having public lands as to industries not located thereon in this, that as to any industry wholly within a state the state, especially as to a public service industry, has the sole power to provide and determine how long such industry should exist, for what length of time it shall carry on the public service, when if at all, its rights shall expire, and to whom, if at all, its properties shall be transferred, and the effort of the United States to determine the life of an industry, especially a public service industry, within a state, by virtue of the right of way, is clearly the exercise of a power not granted by the Constitution, and which it could not exercise in a state not having public lands, and which it therefore clearly cannot exercise with respect to constitutional right within a state having public lands.

The provision that the lease shall be given through any national forest or other reservation only upon a finding that the lease will not injure or destroy or be inconsistent with the purposes for which such forest, national monument, or reservation was created or acquired, is a clear undertaking to confer authority upon the head of an official of one of the bureaus of the Federal Government to determine whether an

industry shall be developed within a state at all or not. In other words, the land owner is to determine for the state whether its lands may be used for the development of the state or not, which is an express effort to interfere with and misplace the relations that exist between every other land owner and his state.

Also, the right is given to the secretary to give preference to the development of electric power by states, counties or municipalities, or for municipal uses, whereas, any question of preference is not for the owner of the land, or of the right of way, but solely for the state itself, and this power, it will be observed, is not to be exercised in deference to the laws of the state, but solely in the discretion of the Secretary of the Interior.

The Secretary of the Interior is commanded to lease, but in order to enable applicants to secure data "The Secretary of the Interior *may* under general regulations permit (or, of course, refuse) the right to make necessary preliminary surveys."

It is also provided that no lease shall be granted until the applicant has the right from the state to sufficient water to develop or generate the electrical energy. Correspondingly, if it is provided by the state that no water right could be acquired until the right of way was obtained, all development of water power in all the public land states would be effectually prohibited.

In Section 3 it is provided that where electric power is generated under such lease in a territory of two or more states, the regulation and control of service and charges for service, and the issuance of stocks and bonds, shall be vested in the Interstate Commerce Commission.

We may here assume that Congress would have the power to regulate the interstate transmission of electric power, but assuming that it has, it is to be observed that no interstate transmission or use of electric power is to be regulated except where it is developed under these leases on the public lands, which would amount to a clear failure of Congress to enact laws applicable to all of the states and to all of the related industries of the states, but merely to an industry incidentally developed on the public lands; all others, although equally needing and requiring such legislation, will be exempted therefrom. In contemplation of constitutional principle, no law may operate incidentally upon the question of the location of a right of way over a piece of public land but only by virtue of the character and interstate connection of the industry.

The question of putting the financial operations of interstate corporations, such as railroads, telegraph and telephone lines, etc., the issue of bonds, stocks, etc., of such companies, by an act of Congress under the Interstate Commerce Commission has been merely mooted in Congress. It has never been even taken up or considered in any definite way. If it is a proper and beneficial thing, it is much more needed in connection with the de-

finite and extended interstate operations of railroad and telegraph companies than in the incidental cases where it sometimes occurs in the transmission of power. But an unadopted policy, not even considered where it is most called for —if it is called for at all—is applied to power companies operating on the public lands. Handed to these western companies "off the bat," so to speak.

The policy of such control has not been considered or decided upon as to general interstate operations. Not at all. But we have been a good example of what may be expected when legislation becomes sectional and not applicable to more than one-fifth of the people.

The vastly important question of federal control over the incorporation, financial operation, bond and stock issues of corporations engaged in interstate business, has never been taken up or even definitely considered in Congress. But it must now be admitted that it has at least reached the experimental period of vivisection. They are trying it on the Dog—we impersonating the Dog. A role we will play with increasing frequency if legislation not applying to the body of the country can be constitutionally adopted.

If the Federal Government can lease, limiting the term to fifty years, it can limit the term to five years or one year, or refuse to lease at all.

If it can lease or refuse to lease, as the Secretary's judgment may dictate as to interfering with the public lands, it can refuse all or any leases applied for.

If it can permit physical connections, it can refuse any connections whatever.

If it can charge one dollar per horsepower per annum it can charge ten dollars per horsepower per annum.

If it can regulate rates and service in a state having no regulative authority, it can do the same thing in a state having regulative authority.

If it can take over property and business within a state on the terms set forth in the Act, it can do the same thing on any other terms it may choose to insist upon or provide for. The Fourteenth Amendment restrains the states, not the United States.

If the Federal Government has the powers asserted in this Act—in no manner claimed under the Constitution, it has such powers only because it holds the public lands by unrestrained sovereign right and may prohibit any use thereof whatsoever or impose any conditions on such use it may desire to dictate in connection with such sovereign right.

If the Federal Government can regulate industries and adjust local differences by graduated rents, it can adjust sectional industrial differences by increased rents. For instance, if cheap power and energy generated in the West was tending to transfer manufacturing industries from the eastern, southern and central states to the West, the argument in favor of increased rents for the use of western power sites would be very strong—quite unanswer-

able, in fact—in the east and south and central sections of our country.

It is provided also that the physical combination of plants for the generation and distribution of power or energy under such leases not in violation of law may be permitted in the discretion of the Secretary of the Interior. It will thus be observed that if an electrical company, operating on the public lands, desires to make physical connection with another company, and although the state laws permit it, and although the state laws not only permit it but even though the state authorities should so command, the Secretary, in his discretion, could refuse the right to make such physical combination, and there could be no clearer case of an unequal exercise of federal power under a federal law not relating to protection of its interests in the public lands, but only to the activities of an industry where some part of its right of way happens to touch the public lands.

In Section 4 it is provided that no lessee under this Act shall create any lien upon the land leased, nor (notice the disconnection) upon any power project within a territory or intended for use in the generation and transmission of water power or energy in two or more states and developed under a lease issued under the Act by a mortgate or trust deed, except approved by the Interstate Commerce Commission, and for the bona fide purpose of financing the construction or operation of such project.

In the first place, as worded, the language literally construed, prohibits the creation of any lien upon the land leased whatever, and of course, in the absence of a lien upon an essential part of the company's property, no financing would be possible.

In the next place, as heretofore pointed out, the prohibition and the requirements do not relate to interstate transmission of power generally, although the conditions and necessities may be identical, but is applied only in a discriminating way against these particular industries.

Section 5 is usually referred to as the "Recapture" clause. But since the United States never had or claimed any of the property which it is proposed to "recapture," except such as it may have incidentally leased under the leases authorized, and since it contemplates the taking over of the operative properties of the leasing company, no matter how small the leased interest may be nor how large the properties may be, it could hardly be seriously assumed that the United States Government was "recapturing" something that it never had or claimed.

One of the highest functions of any state is the function of eminent domain. It is a power reserved to and inherent in every state of the Union. Except as restrained by the Fourteenth Amendment from confiscating property, the rights of such state is supreme in this regard, By this law Congress undertakes, with relation to every one of the public land states and to every industry situated upon the public lands or having any necessity for an easement thereover, to compel such

state and its agencies to yield this essential power of the state to the United States.

No provision in any act of Congress could be devised more violative of or contemptuous of the rights of the public lands states than this provision, asserting the authority of the United States to compel and require the process of eminent domain in its own favor for the use of something to which the state and its agencies are entitled and upon conditions and terms fixed by the United States.

Further contemplate, if you can, the equal rights and opportunities of a state within which the United States Government as such shall conduct a public service. Imagine if you can the state and its officers regulating the rates, controlling and regulating the service and prescribing all of the conditions, financial and otherwise, of such an industry, where carried on by the United States. Most of the states now are fully exercising these regulative powers over all of their public service corporations.

Further, it is provided by the Constitution of the United States that the United States Government may levy excise taxes which it is provided shall be uniform throughout the United States.

If, however, the United States Government, under the Constitution, and although all of its powers were conferred upon it for purposes of the common defense and general welfare, could descend to the position of a purveyor of electrical and other service within a state and to its cities and towns and inhabitants, and unless the sovereign state could effectually regulate the rates of the sovereign government, this provision, for equality of taxing power—one of the most important limitations of the Constitution—would be effectually repealed with respect to each of the public land states.

In Section 6 it is provided that if the United States does not exercise its right to "take over," maintain and operate the properties, or does not renew the lease, then the Secretary may lease the properties to the original lessee, including the properties on the public lands, as well as those off of it, "under such conditions and for such periods as applicable laws may then authorize, and upon the further conditions that the new leasee shall pay for the properties as provided in Section five of this Act."

The United States thus not only fixes the right and the measure of eminent domain within a state for itself, but also for any company that may desire to acquire the properties of another company.

Yet we are told that the states of this Union are and must forever remain equal in all respects whatsoever.

Also, in Section 7, it is provided that if the state laws permit, the Secretary of the Interior may approve contracts extending for twenty-five years beyond the life of the lease; "or, if sold or delivered in a territory or within a state without a regulating authority, then upon the approval of the Secretary of the Interior" such contracts may be made and the successor will take

over the property subject to the contracts.

It will thus be observed that any of the free and equal states of this Union that might have the temerity to continue "without regulating authority" would be made subject absolutely to the approval of the Secretary of the Interior as to whether or not lawful contracts between the citizens and corporations of that state could be made.

It is possible that I may be overscrupulous of constitutional limitations, but it would appear to me that any fairly self-respecting American citizen would be ashamed of such ribbled and jocular offense against the constitutional rights of the states as this sentence expresses.

Probably the most important provision of the Ferris Bill is contained in Section 8. That is to say, with respect to the workability of the bill and the development of industry and its ultimate effect upon the states.

This contains the provision "That for the occupancy and use of lands and other property of the United States permitted under this Act, the Secretary of the Interior is authorized to specify in the lease and to collect charges or rentals for all land leased, *which charge or rental may in the discretion of the Secretary of the Interior be measured by the power developed and sold or used,*" etc.

Following this is an exemption for power used in operation, and a provision that fifty per cent of the revenue that is obtained shall be paid to the state, and later, a provision for the use of the other half for the reclamation purposes of the United States. And with a further provision that leases for the development of power by municipal corporations for municipal uses shall be issued without rental charge.

We have been very earnestly assured that these rentals will be insignificant and unimportant, but as a very great favor to municipal corporations, they are to be exempted from paying a rental charge of no real importance to anybody. But the consideration that interests me is that under this law, regardless of the value of the right of way or its rental value, the Secretary of the Interior may measure the rental by the power developed, which rental when so measured might be ten times or a hundred times or a thousand times as great a rental per annum as the entire value of the right of way leased from the United States.

If such an authority can be conferred upon an individual official or if such a charge can in any way be imposed for a use of a right of way, measured by the power developed, then a corresponding authority can be given to impose a charge for the lease of a right of way for tonnage shipped over a railroad or for freight transferred over a highway, or for irrigation water transported through a ditch, and the equality of right and opportunity and of taxation guaranteed to all of the states will stand effectually repealed in every one of the public land states.

A statement of the proposition is sufficient to discredit it with any person having an elementary knowl-

edge of constitutional principles and constitutional right.

We here digress to observe that the principal reason assigned by the Department of the Interior at the hearings on the Ferris Bill why the right to fix the rentals shall be left with the Secretary and not fixed in the Act of Congress, was that some developments would be very expensive and difficult, and these should pay small rentals, but that others would be very cheap of construction and inexpensive in operation, and therefore could afford to pay high rentals, and in order that the "people" might have the benefit of this situation, a difference in rental approximating the difference in cost of production, should be charged for the lease.

I invite any one who imagines that the passage of the Ferris Bill would encourage development, to contemplate the application of such a rule and the imposition of such rentals and its effect upon the development of industry in the western states.

Section 9 provides that where power is developed under a lease in a state which has not provided a commission or other authority having power to regulate rates and service of electrical energy and the issuance of stocks and bonds, etc., that "the control of service and charges for service to consumers and stock and bond issues shall be vested in the Secretary of the Interior or committed to such body as may be authorized by federal statute until such time as the state shall provide a commission or other authority for such regulation and control."

We pause here to observe that while probably the states will have such laws, nevertheless, it is a matter that at least in the non-public land states rests wholly in the discretion of the state and its people, but in the public land states, if we do not pass laws acceptable to the departments at Washington, we are to be placed under the full guardianship of the Secretary of the Interior and our rates for service and charges for services and stock and bond issues will be regulated by him.

This is undeniably and purely a function of government. It has no relation whatever to the proprietary interest of the Federal Government in the public lands, and its attempted assertion is, I may submit, directly, in the face and teeth of the decisions of the Supreme Court of the United States which we have quoted, that the United States Government can assert no such exceptional power in the public land states through the public lands, or otherwise.

Section 11 purports to give the Secretary of the Interior power to examine the books and accounts and property costs of the lessee.

Section 12 provides for forfeitures of the rights of way for failure to pay the rentals and for other violations of the lease.

This sounds innocent enough upon its face. But how about the states and the people within the states and the public service within the states?

No public service corporation is permitted to discontinue a public service within a state, no matter

how much it might desire to do so. Nevertheless, the Federal Government calmly assumes that it can forfeit its right of way and put it out of business and leave the state and its people to whistle for their power.

Section 14, if literally construed, would repeal the entire act.

> Sec. 14. That nothing in this Act shall be construed as affecting or intending to affect or to in any way interfere with the laws of any state relating to the control, appropriation, use or distribution of water.

Obviously, therefore, every provision of the Ferris Bill conferring discretionary power upon the Secretary to give or refuse permission for a right of way or to develop an industry or to impose a charge thereon, guided by his discretion and measured by the productive capacity of the water itself, is of course an undeniable interference with the laws of any state relating to control, appropriation and use of water.

There are many other interesting provisions and questions of constitutional law involved in this act, but I think it is unnecessary to discuss them here.

Allow me here to pause to suggest and prophesy a little. I have no quarrel with individuals who disagree with me, no matter whether I can approve of their judgment or not. But there is a disposition to assume that this invasion of the Western States by the departments of the Federal Government, and the usurpation of their functions in an alleged effort to control monopolies is popular. That it is good politics.

Allow me first to observe that several of the foremost exponents of this doctrine of guardianship based upon disregard of constitutional principles have already passed from their exalted estate and from their leadership of the American people into obscurity.

We may feel assured that our friends in Washington are trying to work out all of the problems of government for us. I was much interested yesterday in the address of Mr. Merrill. Really, we do have a good deal of trouble in trying to formulate a solution of the problems of government; of municipal ownership, and as to how long a corporation ought to live, and as to when it ought to die, and as to what we should do with its remains after it is dead; and of the problems of public service, rates and values and the like. Our distinguished friend comes out into the West and solves all these problems for us. He tells us all about them and decides them for us.

Wherever we are fortunate enough to be connected with the public lands, the heads of the bureaus in Washington are willing to assume all of our responsibilities as citizens.

> "Ours not to reason why;
> Ours not to make reply;
> Ours but to do and die!" (Laughter.)

It is extremely good of Mr. Merrill to do all of this for us. But as a mere incident I may call attention to the situation that it is violative of all of the principles of the constitutional government.

No official of the Federal Government should have any greater

weight or greater voice or speak with any greater authority in the management of the affairs of the public lands states than he has and should have in any state where there are no public lands. (Applause.)

Nothing is farther from my thoughts than to complain of any law that rests equally on the one hundred million of American people and equally on the forty-eight states of this Union. But I have a right to complain, and I do complain of any law, whether its purposes be good or whether they be bad, that does not apply equally to all of the states and to all of the people of the United States, without regard to any section or any state boundaries. (Applause.)

One of the most serious questions involved in the Ferris Bill is the question of unequal revenue and taxation.

By the provisions of the Constitution of the United States the right only of equal taxation is conferred upon the Federal Government. Our friend, the Senator from Montana, inquires what is the difference between a lease for fifty years at one thousand dollars a year, and an outright payment of fifty thousand dollars for the right of way.

The difference is very clear to me. Most of these rights of way are over lands that are totally worthless, or practically so, for any other purpose.

They have never been taken up or occupied because they are unfit for occupation or use. They are usually over precipitous mountain sides made up of rocks and stones and surface areas of no value. To charge a dollar an acre for them would be extortion.

The Secretary of the Interior would be ashamed to name any fixed lump price for such uses, since they do no harm to the lands which in any event are of little value.

But if the rental can be fixed under a subterfuge of a tax or charge on the quantity of power generated—an excise tax on the industry—then under the subterfuge a charge can be imposed that would appear extortionate if it related only to the lands.

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I recognize in our friend the Senator from Montana a great and able lawyer, and it is all the more pity when so great a lawyer as he is ceases to interpret the law according to the standards of the court and adoptes the nonjudicial standards of departmental construction. He makes the assertion that a charge of one dollar per horse power amounts to nothing. It amounts to this: If, as he says, power is produced and sold in Montana for twenty dollars, it is an excise charge of five per cent gross on the income of the corporation.

Just five times as much of an income tax as is levied under the general income tax law of the United States, but which general law is subject to exemptions.

A gross tax of five per cent is equal to more than half of the net income that the public utility commissions of the Western States permit the public utility corporations to earn, and yet my friend the Senator from Montana says that it is

a charge that amounts to little or nothing.

We constantly have been urged to compromise and moderate our opposition, and accept the Ferris Bill in an amended form.

But my friends, there is a good deal of principal as well as policy involved in this thing. I would be very loath to advise the acceptance of a law that operated unequally in different states of this Union. I do not want to see the American people divided into sheep and goats. It is not nearly so important as to whether we are all goats or all sheep, but we ought all to be of one kind or the other. (Applause.)

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If the Secretary of the Interior can regulate our public service corporations and fix the rates that they shall charge and the rates we shall pay, then there is no reason in the world why federal law should not vest in him the authority to regulate the question of marriage and divorce on the public lands or the compulsory attendance of the public schools on public lands. And there is no reason in the world why, if this should be done, the Secretary of the Interior should not be authorized to regulate elections in the southern states, or to do any other thing that in his will and judgment would be beneficial to the people of those states.

In the case of *Kansas* v. *Colorado*, 206 U. S., 46, the Supreme Court used this language:

> We do not mean that its legislation can override state laws in respect to the general subject of reclamation. While arid lands are to be found, mainly if not only in the western and newer states, yet the powers of the National Government within the limits of those states are the same (no greater and no less) than those within the limits of the original thirteen, and it would be strange if, in the absence of a definite grant of power, the National Government could enter the territory of the states along the Atlantic and legislate in respect to improving by irrigation or otherwise the lands within their borders.

The greatest privilege in the world, my friends, is to be an American citizen, an equal citizen of the United States. I would not feel any more exalted to be a senator of the United States than I do to be a plain American citizen. (Applause.)

In the face of the efforts of the Ferris Bill to assert that states may be made unequal and citizens may be made unequal, it is high time that we were reminded of the dignity and importance of equal American citizenship.

The questions involved of equal taxation and of equal right are the very questions for which our fathers fought, and which we believed had been achieved in this country and settled for all time.

There are thirteen American states that face the Atlantic Ocean; there are only three states, California, Oregon and Washington, that guard the whole western front and fill the space that fronts on the Pacific Ocean and mark the western boundary of this country.

The time may come when we, the people of these western states, shall

not only have to bear our equal share, but maintain an unequal part of the burdens and the effort to maintain constitutional government and civil liberty.

The world seems literally made under the leadership of individual autocracy and non-representative non-constitutional government. It may be that we of this country shall have yet to fight, as men have seldom fought before in this world, for the preservation of civil liberty, constitutional government and equal opportunity in this world.

There should be an end of this bargaining for power, of this trifling with constitutional right, of this effort to disqualify and render unequal the states.

"God of our Fathers,
Be with us yet;
Lest we forget,
Lest we forget."

(Applause.)

RESOLUTIONS REPORTED: DEBATES.

Senator Smoot, Chairman of the Committee on Resolutions, introduced the report of the Committee on Resolutions.

The Resolutions introduced were read by the Secretary, and are as follows:

Report of Committee on Resolutions.

Whereas, the new states admitted into the Union are of necessity upon an equal footing in all respects whatever with the original states; and,

Whereas, each state has full jurisdiction over all lands within its borders, including the beds of streams and other waters; and,

Whereas, the ownership by the Federal Government of the technical title to vacant public land within a state does not confer upon the Federal Government any greater or other governmental powers than it possesses within the original states; and,

Whereas, the long established and sound policy of the United States with respect to the disposition of its unappropriated public lands is opposed to the making of a direct revenue therefrom, beyond the expense incident to the surveying, classification and disposing of such lands, but, on the contrary, that said policy is intended to encourage and promote the settlement and development thereof; and that any act of Congress, or any administrative interpretation thereof, which is not in harmony with this policy, does an injustice to the new states by placing them on an unequal footing with the original states, and by discouraging and preventing the settlement of such new states and the development of their resources; and,

Whereas, the vacant land belonging to the Federal Government constitutes two-thirds of the area of the states represented in this Conference, and amounts to more than twice the area of the thirteen original states; and,

Whereas, the vacant lands belonging to the Federal Government are under the law exempt from taxation, while the burden of maintaining local government over their entire area rests upon the states; and,

Whereas, the maintenance inviolate of the constitutional equality of the states of the Union is essential to that balance of power on which the perfection and endurance of our political fabric depend, and to the harmonious operation of the scheme upon which the Republic was organized; Now, therefore, be it

Resolved, that we are unalterably opposed to any legislation which is in conflict with the fundamental principles above declared.

Resolved, that the states have the constitutional right and power to control and regulate the appropriation and use of the waters within their boundaries for

all beneficial purposes except navigation, and also the right and power to control and regulate the rates and service of their public utilities.

Resolved, that we are opposed to any policy that looks toward imposing the system of leasing generally upon the public domain for the reason that such system is contrary to the spirit of our free institutions, and would retard the development of the resources of the states in which there is still any public land.

Resolved, that in view of what we believe to be administrative misconstruction of existing legislation, we are in favor of a declaratory act by Congress recognizing and acknowledging that the proprietary interest of the United States in the vacant land within the states is subject to the jurisdiction and eminent domain of those states for all uses which are declared by the laws of those states to be public uses and which are so essential to the development, well-being, and prosperity of those states.

Resolved, that the purposes of encouraging the development and utilization of the natural resources of the country by private enterprise which actuated Congress in the enactment of the right-of-way acts of July 26, 1866, and March 3, 1891, and in the enactment of the acts of March 3, 1877, and June 4, 1897, making all non-navigable waters on public lands, including forest reservations, free for appropriation for beneficial uses, should actuate Congress today in the enactment of any further legislation upon these subjects.

Resolved, that any legislation the Congress, the purpose or effect of which is to substitute arbitrary or discretionary authority of executive officials for the fixed rules of law governing the administration, sale or other disposition of public lands and reservation and rights-of-way over the same will be unwise and inconsistent with the spirit of our Constitution.

Resolved, that we are opposed to ownership or control either direct or indirect by the United States Government of intra-state public utilities.

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Senator Smoot moved that the Resolutions be adopted as the Resolutions of the Conference.

Motion was seconded by ex-Governor James H. Hawley, delegate from Idaho.

Senator Walsh introduced Resolutions as a report of a Minority of the Committee on Resolutions, said Minority Report having been signed by the following members of the Committee on Resolutions:

THOS. J. WALSH, Montana; ERNEST LISTER, Washington; W. M. KEARNEY, Nevada, and A. E. CHANDLER, California.

The Chairman directed that the Minority Resolutions be read, and they were read. The Resolutions are as follows:

Minority Resolutions.

It is the opinion of this Congress that no subject likely to engage the attention of the National Legislature at its ensuing session transcends in importance that which will deal with the disposition of power sites on the public domain. Development is retarded if not wholly interrupted because capital does not find in

the existing law the security to which it is entitled.

An act framed upon the following principles, would, in the judgment of this Congress, prove inviting to investors, safeguard the public interests and be generally acceptable to the people of the states directly interested, namely:

1. The sites should be leased for a period of fifty years.
2. The lease should be irrevocable, except upon a decree of a competent court, for a breach of a condition expressed in it.
3. The lessee should be required to pay an annual rental for the use of the premises, to be calculated on a basis of the power produced and sold at a rate per horse-power to be fixed in the lease.
4. The Government should have the right at the expiration of the period of the lease to take over the plant through which the site is utilized by paying to the lessee, the fair value of the property not including, however, anything on account of rights in lands secured under the act or other laws of the United States, or appurtenant water rights secured by appropriation or on account of the franchise under which the operations of the lessee are carried on.
5. Rates for intra-state service should be fixed and the issuance of stocks and bonds by any lessee corporation be regulated by the duly designated board or officer of the state in which the site is situated; if there is no such board or officer authorized in that behalf by any such state, then by the Secretary of the Interior.
6. Rates for inter-state service should be fixed by the Secretary of the Interior.
7. One-half of the rentals derived from lessee should be paid into the treasury of the state in which the site is located for the support of schools and the other half into the Reclamation Fund.

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Senator Walsh moved that the Minority Resolutions be adopted as a substitute for the resolutions introduced for the Resolutions Committee by Senator Smoot.

Motion seconded by A. E. Chandler of California.

SENATOR WALSH: Mr. Chairman, I do not know how the members feel as to further debate. The subject has been thoroughly canvassed, but before a vote on this matter is taken I wish to say a few words.

Any criticism to the principles announced in the minority report, perhaps, center about two propositions. It was urged in the first place, that under this system the states would be robbed of their taxing power. I think it was quite satisfactorily demonstrated here upon this floor in the course of this debate, that it was entirely an erroneous idea. I think it was demonstrated that the states will be able to go on taxing these leases and taxing the improvements and developments, and taxing the property just the same as if title in fee had been conveyed. But the distinguished senator from Utah, hav-

ing admitted that that was the case, said that the trouble about it is that when the government of the United States fifty years hence takes over the property as he said, it will not be subject to taxation.

Now, we are to understand accordingly, that this map was not prepared here for the purpose of demonstrating to this Convention that the state would be in any wise embarrassed today or tomorrow or next year, in the matter of taxing these things, but that fifty years from now there will be no chance to tax the same.

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I understand that our distinguished chairman, with his associate, Governor Carlson of Colorado, made their way down to Washington, D. C., and made complaint there before an official body that fifty years from now they feared that the State of Utah and the State of Colorado would not have land enough to tax, but that they were now embarrassed in their revenue and would be more so at that time. So we are to understand that now.

Well, my friends, why talk about fifty years from now? Are you afraid that the generations that are to come after us, our grandchildren who will be upon this continent in our places, will not be able to devise some plan by which the states will be able to get property to tax sufficient to meet their obligations? Are you very much concerned about what they will do?

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Again it was urged that this bill takes away the power from the states to regulate and fix rates. There is no provision in this bill which would give such a right to regulate the charge that would have to be made by these companies, for when I turned and read the bill I found no such privileges granted to the Secretary of the Interior as has been urged. And a lot of this discussion, gentlemen, that has gone on has been without any kind of reference as to what is in this pamphlet.

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When I say that no power would, or could be, exercised concerning rates or other matters of similar character, but that the Federal Government would have control over these matters, unless it be at the end of the period of fifty years from now, when the Government takes over this property, why, then it will be possible to regulate.

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Some of those who have read legal papers, it appears, have had copious fear lest the water power companies down in the State of Utah, where they do not have any public utilities commission to regulate the rate—lest the poor water power companies down in Utah will be subject to rates made for that state by the Secretary of the Interior, but they may appoint a public utilities commission and need not worry on that ground for a period of fifty years from now.

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They are afraid that the state may lose taxes and the taxing power over this property. Well, of course, the Government can take it over fifty years from now, but it cannot

take it over until Congress passes an act authorizing the Government to take it over and making an appropriation that will be sufficient to compensate the holders.

When it comes time to make this transfer and pass this act and make the final arrangement, the people will find some way to arrange it so that they lose nothing.

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It is urged that the Government have no power or right to go into the business of peddling electric power fifty years from now. Of course, if that is true, then the power sites will remain in the hands of the men who hold them, and I know that you are not afraid of that.

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I really would like to say another word. In the course of the remarks of my friend, Senator Smoot of Utah, he referred to a portion of the testimony of Mr. Ryan appearing in the records which I read, and he said that he wished I had continued reading the testimony of Mr. Ryan, and that I would have found that Mr. Ryan said that whatever amount you charged for the privilege of keeping these sites would be so much added to the general expenses found necessary for operating the plants, and that this charge would be passed on to the consumer, and by that he meant to provoke some rapturous applause from the floor, chiefly from the guests and auditors in the rear of the room, not from the delegates. Senator Smoot did not intend to have it understood that I did not read all that Mr. Ryan had said upon the subject concerning which he was being heard at that time.

In another part of his testimony, entirely separated from the part which I read, Mr. Ryan did state some such thing. I would like to have nobody here understand from Senator Smoot's remarks that I ever tried to mislead anybody about the parts of the record which I read concerning what Mr. Ryan said. That, likewise, received the earnest approval of some of the auditors, as if there was something remarkable about that.

It is said, and I have heard it asserted, that the amount charged will not find itself included in the rates. However, I do not entertain that kind of an idea at all.

You hear a whole lot in Congress in the tariff debate that the tariff duties do not find themselves expressed in the charges made for the commodities upon which the tariff is levied. I do not give my adherence to that doctrine at all. It will be there!

Whatever charges are made for the use of the power sites, those charges will go into the general account of the company, just as the taxes will go in and just as all other expenses go, and it will be an element in the rates, and I would never give my assent to a measure of this character, and lay a tax upon the people of these Western States to go into the general treasury of the United States for the improvement of the harbors and rivers of New York State, for instance. But that money is going for the benefit of our own state here. What difference

does it make if one-half of it goes to the treasury of our own state and the other half goes to supplement the Reclamation Fund of this great country of ours? So much for that.

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Now, Mr. President, it was a most impressive and most pitiful story that was told to us last night by Mr. Pierce. His paper was a most valuable contribution to the Conference being carried on here. Mr. President, if I had heard nothing else in the course of this Congress than that lecture last night I would have felt paid over and over again for my visit to the City of Portland. (Applause.)

We might just as well have that great cyanide plant down at The Dalles. There is no reason why you could not have one there and then duplicate it.

During the last session of Congress Mr. Cooper, the engineer who conducted the Keokuk Dam building, haunted the corridors of Congress begging for the passing of any kind of an act that would permit him to spend $10,000,000 for the construction of a nitrate plant at the border line between the states of Idaho and Washington.

Now, here is Mr. Pierce, with a grand proposition to develop 250,000 to 400,000 horse power for irrigation purposes in the Inland Empire in the State of Washington. Yet, not an advance has been made here towards a solution of this problem. Not only that, but there has been a recession from the problem in these resolutions offered by the majority. The meat of it is on the top of page 2. I will read to you.

> *RESOLVED*, That we are opposed to any policy that looks toward imposing the system of leasing generally upon the public domain for the reason that such system is contrary to the spirit of our free institutions, and would retard the development of the resources of the states in which there is still any public land.

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It is peculiar that they say no new legislation ought to be enacted and that they declare that the present laws are all that are necessary.

Mr. President, it is not inappropriate for me to say that these resolutions were drafted and presented to the Committee on Resolutions by the Honorable Clyde Dawson, a delegate from the State of Colorado; and there is a peculiar and particular significance and appropriateness in the fact that the State of Colorado, that has permitted over 100,000 acres of the coal land—the one source of power it has developed—to get into the hands of the Colorado Fuel and Iron Company that rules over the industries of that state with an iron hand and a despotic will—that it should, through its delegate, Mr. Dawson, ask to be given an opportunity to control that other source of power—the flowing waters of that state. I wish to be recorded against it.

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I have nothing further to say about these resolutions except that they are historically false.

I have nothing further to say about these resolutions except that

they are contrary in their spirit in many respects to what is now the adopted doctrine concerning the constitutional principles governing such a case as repeatedly laid down by the Supreme Court of the United States.

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I am not desirous of taking up your time by talking any further to this Congress, and in pointing out the particulars of this bill, but I want to say this in conclusion:

There are twelve states represented here in this Congress.

This Congress, if it adopts this majority report, is declaring practically, that no new legislation of any kind is necessary except for an act defining what the law now is.

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The States of California, Nevada, Washington and Montana stand here protesting to the world that these resolutions do not express the sentiment of the people.

Moreover, Mr. Chairman, everybody recognizes that the power of the West is in the United States Senate, where equal representation gives equal power and right to control. There we must look for support of these principles if we can.

The State of Nebraska, by its representative, Mr. Lyon, signed the majority report of this Resolutions Committee. Senator Norris of Nebraska, a Republican member of the Senate, signed the majority report of the Senate Committee in favor of the Ferris Bill, and advocated it at every stage of its history before the committee. Senator Hitchcock is outspoken in his denunciation of the principle that these power sites ought to be granted away in perpetuity.

The State of South Dakota is not represented here, but Senator Sterling, the Republican senator from that state, signed the majority report of the Senate Committee, and his colleague stands with him. Senator Robinson signed with the majority of the Senate Committee, and Senator Clarke is with him, is more than sanguine in the expectation that the bill will be passed.

Kansas is not represented here. Senator Thompson is the representative from that state on the committee and he signed the majority report of the Senate Committee. Senator Smith of Arizona signed the majority report of the Senate Committee and will vote for the principles there enunciated and Senator Ashurst of his state will vote that way.

Nevada records itself in this Conference, and its two senators are the same way.

California will be divided. And here is our neighboring State of Washington; it is properly represented on our minority report, expressing the sentiment of the senator of the State of Oregon, in that it desires having a development of the water powers in Washington, if some new legislation can be enacted on the subject. Senator Jones, who is an invited speaker here, is not here. Other public duties have called him away, doubtless, but Senator Jones is the author of a bill, the fundamental principle of which is the lease of the power sites of the State of Washington for a period of fifty years. I don't know how

Senator Jones will stand, but I believe that he stands committed by that idea, for he presented his bill, and that was his attitude with respect to it. All of the features of the Ferris Bill do not meet with his approval, but he is committed to the doctrine that the right of the state shall not be laid away in perpetuity, and it is proposed by this resolution that the right of eminent domain shall be appealed to and that the government of the United States shall be obliged to give up these power sites in perpetuity to a corporation that may go up and appropriate them.

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In the face of this situation and of this force, my friends, I conjure you by every interest of the people of this Great Northwest, let us try to entice some of these people who are anxious to build nitrate plants in this country to do so.

Oh, just think of it for a moment!

Our great nation here looks the whole world in the face, with a war spirit taking possession of mankind in all portions of the globe, and no resources whatever out of which we can even provide ammunition in the event that any of these war countries should see fit to attack us. And this is a grand opportunity for utilizing the resources of this empire to the production of fertilizer, as was illustrated to us last night by Mr. Pierce in his lecture.

Here we are standing and talking about constitutional principles! No man, wherever he may live or whatever his profession may be, may take precedence over me because of his love and reverence for the grand document, the greatest work ever passed off at one time by the brain of men. (Applause.)

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But, Judge Short, representing the water power companies, takes one view of the Constitution, and I, a representative of one of the great states of the Union, take quite a different view, and both of us are inspired with the love and reverence for the Constitution and laws of this country.

Why should you, in that state of affairs, hesitate because of some possible fault that may be found with these provisions, applicable to conditions that may be found fifty years from now? Why turn it down?

For the matter of that, why don't somebody introduce a resolution that in the perplexity of the situation Congress had better do what, in its wisdom, it thinks best to do? (Applause.)

SENATOR CLARK: Mr. Chairman and gentlemen, I wish in no wise to reply to the impassioned address of the distinguished Senator, but I am glad that this minority report has been presented. I am glad that it has been presented because more clearly and more distinctly than in the Ferris Bill itself is presented the iniquity of the whole proposition! (Applause.)

It does not endorse in set terms

the Ferris Bill, but it does endorse and in plain language what it is my firm belief to be their conception of the right policy to be pursued in regard to our water powers. It does indulge the hope, at least, that the water power development in this country in the future shall be carried on under the strong arm of the Government of the United States. (Applause.)

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It does provide a public service commission for every state in this Rocky Mountain country that is not already provided with a public service commission—and it provides for one whether they want it or not. And it sets out as that public service commission not a man of the state elected or appointed for that purpose from its citizenship, but as the sole arbiter, and as a sole member of that public service commission in the state, a man who for the time being may be acting as Secretary of the Interior of this Government of ours.

It says in so many words that if the State of Oregon, or the State of Washington, or Montana, has no public service commission of its own to fix the rates at which electricity shall be supplied, then, whether they want it or not there shall be imposed upon them an official who is to perform that function of government for them.

That official is to be the Secretary of the Interior of the United States. That lies at the basis of this whole controversy.

There is a worse thing than war! I would rather this nation be destroyed by bullets from wi than from truckling subservi (Applause.)

If our nation is to be destr let us pray God that the destru may come from without, an not let us voluntarily sap the dation from our laws and Cc tution. Not only here, bu other bodies—it was attacked terday in the Committee on F lutions.

I do not think that I am viola the confidence of that committ I state here what I stated be the Committee on Resolutions the resolutions passed by this C vention would have no effect Congress. The question was h estly asked there, and I answe it honestly, that I doubted v much whether any sentiment pressed by this body would h any material effect upon the le lation passed by Congress.

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We are warned by the Senat from Montana, who speaks wi authority, being one of the co trolling political influences in t Senate of the United States, th there is no possibility of a bill pas ing the Senate of the United Stat that does not involve the ver things set forth in this minorit report. He knows whereof h speaks! (Applause.)

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I will go further, and I voice th fear that there is a belief in my mind that the Ferris Bill, or some thing substantially along that line, will be passed at the next session of Congress, but I wish to state now

at it will never be passed by eans of my vote! (Applause.)

The time is far distant when any ill, if it shall render to the Govern- ent of the United States the sov- eignty and the right which my dependent state has—the time is ar distant when I shall give my dherence to such a proposition. Applause.)

Like the Senator from Montana, have fully enjoyed my share of he honors and of the joys of public ife. Very few men willingly resign igh position, congressional or other- wise, but any time would I resign my position in the Senate of the United States rather than I would sacrifice the fundamental rights of the state which I represent. (Ap- plause.)

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Just a passing remark to show how this matter is considered, and some other matters are considered, by the senators and many members of the Public Lands Committee who had signed the majority report of the Ferris Bill.

I see a picture of the committee room where the discussions and hearings from time to time were conducted, and I want to tell you that the only time that the most of this committee was present was when they met on a final day on which they signed the report.

The members of that committee only go into it now because it is brought up by the Senator from Montana, as is shown overwhelm- ingly by great preponderance in favor of the Ferris Bill on the Sen- ate committee. The working mem- bers of the committee who gave their time day in and day out were not the members of the Senate com- mittee who signed the majority re- port. (Applause.)

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I want to consider just for a mo- ment some of the features of the minority report of the Resolutions Committee. I admire it for its interesting expression of opinion, but I cannot give my adherence to its doctrine. I made a statement, in a few remarks this morning that I delivered, in which I said that it has been said on the floor of the Convention, by those high in au- thority, that the prime purpose of the Ferris Bill was not to produce revenue for the Government, but was to take over the control of the waters of these mountains and Western States.

That statement was challenged by the senator from Montana. Of course, I did not hear the statement made, and so I gladly withdrew my remarks. But, if it was not said on the floor of the Convention before this time, it was said on the floor of the Convention in the form of this minority resolution. Here it is. This is what the bill should pro- vide, and what the lessees should be required to pay—"an annual rental for the use of the premises, to be calculated on a basis of the power produced and sold at a rate per horse power to be fixed in the lease."

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If that means anything, it means that the water itself is to be taxed, and not the land. That is true, be- cause a piece of land lying adjacent

to a great water power, as land, is worth no more or no less than a piece of land of like character situated elsewhere on a similar water power. (Applause.)

The tax is not on the land, and the control is not over the land, but it is on the water power and the harnessing of it and the working of it, and the charge for it is made as the government itself sees fit to make it. (Applause.)

If that is not an appropriate plan of control over the water, what is? Could anything be more complete or more effectual?

The water is bound in chains of iron as it passes over the wheel. Every drop of it is charged with a federal tax, and with federal control, and this bill goes so far as to say who shall use it. (Applause.)

Go a little further with me:

(Reads balance of minority resolutions.)

It is a cunningly devised proposition, and it makes but one great concession, and that is that rates for entry upon and use of these power sites shall be fixed and the issuance of stocks and bonds by any lessee corporation shall be fixed and regulated by duly designated party or officer of the state in which the site is situated. That sounds good to me.

I believe that any corporation doing business in my state should be subject both in the issuance of stocks and bonds and in the matter of the regulation of rates charged for services by a legally authorized power in that state thereunto appointed. (Applause.)

I believe that any public service corporation giving public service to all should be regulated in its charges and in its every act by the public service bodies of the state in which it is located. (Applause.)

But that does not imply that I consent to the idea that if there is no public service commission existing in my own state that a man from some other state or from the Federal Government shall exercise the duties and prerogatives of such sovereignty. This bill provides that if a corporation is doing business in your state—entirely within the state—whose lines do not cross the state lines—if such state does not have a public service commission, then the Secretary of the Interior shall say what stocks and bonds shall be issued.

The Secretary of the Interior, according to this bill, shall fix the rates for the transmission of power in a state where there is no public service commission duly authorized to perform such function.

Think of it, Senator Piles, the Secretary of the Interior, shall fix the rates and say what you shall pay for your lights in your city.

If there is any one thing on the face of the earth that the people of this country ought to guard against, in my judgment, it is the continual encroachment upon the individual by the governmental power, because it is the most dangerous—it is the most powerful, and at times the most willful agency that can be well imagined. (Applause.)

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This bill is just a step in advance of any legislation that has been proposed in Congress—or opposed.

Congress, years ago, in its wisdom, passed a law providing for a commission called the Interstate Commerce Commission, who should look into and adjust, as nearly as equitable and possible for men to do, questions arising in connection with transportation across state lines. It was the duty of the Interstate Commerce Commission, under this Act of Congress, to fix rates for such transportation and to do such other things as might be necessary to be done for the protection of the public. This bill goes a step farther, and it fixes rates and regulates matters in regard to electricity, and hydro-electric power, and it does that not through one commission such as the Interstate Commerce Commission, but it makes a commission of one man. (Applause.)

This one man is the Secretary of the Interior, and he acts subject to the will of no one except his chief and subject to no control by Congress or the Senate of the United States or of any other body, and according to this bill he becomes a kind of a public service commission along with his other duties as Secretary of the Interior for the purpose of regulating the distribution of electric power across state lines.

If this is not an effort to give to the administration power to fix rates and other administrative power that ought not to belong to it, why does not the Ferris Bill or some other bill of like character, provide that a commission duly charged with the performance of such duties and with the performance of these functions and operations be created, instead of vesting such powers in the Secretary of the Interior?

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I want you to understand me. I find no fault with the Secretary of the Interior. I have the highest respect for Mr. Lane as a man and an officer. I believe that he does his duty in the way that he thinks that it ought to be done. And I think that the same is true of his subordinate officers.

But, do you know what the Secretary of the Interior has to do now? The Secretary of the Interior has more work passing through his office, I venture to say, than passes through the office of any other officer of the government. I have no doubt but that Mr. Tallman every year passes upon property the value of which is greater than that passed upon by the Supreme Court of the United States.

Now, you propose to add to the burdens of that official this additional burden called for in the minority report. What sort of service would you get? Who would do the work? Who would fix the rates and visit the plants?—for these plants must be visited and must be inspected and he must have his fingers on the details of this great business enterprise at the head of which he is.

Will it be Mr. Lane?

No!

Will it be Land Commissioner Tallman?

No!

They in turn, out of the necessities of the case, would have to delegate that authority to their subordinates. And let me tell you, that

the same sort of authority would be exercised over the water powers and over the water companies and over the individual users of water and water power sites that now has to be exercised in the execution of the other general land laws of the United States. It would have to be done by deputies. It could not be done otherwise.

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But the whole bill is founded upon that very iniquity of which I speak. The minority report makes very plain to us what we might expect should the bill be passed.

It is the evident desire and purpose of the backers of this bill to take away from the states of the West, under the guise of legislative enactment, their sovereign rights which every one of them has to control its own domestic affairs.

I can see nothing further in it. I will have to disagree with them if they contend otherwise, and I am not a water power attorney either. I am not even as much of an attorney as is my friend from Montana, but I will have to disagree with him as to his view of the constitutionality of this law. I do it with a great deal of hesitation, because it is always unwise and generally unsafe to disagree with the Senator from Montana on any law proposition, but I believe in certain fundamentals of this Government, and I believe that we are a nation of individual sovereignties, and I believe each sovereignty has its duty to perform.

I would not have the state perform any duties which the individual can perform as well. I would have the state only perform such duties as the individual cannot perform as well as the state. And I would have the General Government keep at its own business of governing in those particulars where it can do so, but I would not have the Government go into transactions which the state can carry on equally as well as the Government. (Applause.)

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They say that we need to have this control and that the Government is best fitted to exercise it and therefore we must submit to it. They admit that they want control, and they base their claim to the right to exercise this control upon the grounds that we cannot control ourselves.

If we cannot control ourselves as states, we ought to abolish our states, and go back into the provinces or territories which we once were in. (Applause.)

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I do not believe that the people of these states of this nation have ever found their inability to perform their duties. We have done things that we should not have done, and we have left undone the things which we ought to have done in many instances, but we have lived our own lives our own ways. You may be able to run your household better than I can run mine, but, please God, I am going to run my own household in my own way as long as my wife lets me. (Laughter and applause.)

Believe me, no one outside of my own family is going to tell me how to run it. The law protects me if

somebody tries to take this right or privilege away from me.

But God knows that we have not made more mistakes in the management of our own state affairs than has the General Government.

There has not been a thing that the General Government has taken hold of that it has not made a blunder with.

It is to be expected that the General Government should make blunders. I have heard a great deal about frittering our resources in railroad and wagon road land grants and otherwise.

Was it the state or was it the General Government which enacted these grants? Oh, I ask you who did it.

Who made this wonderful land grant to the Pacific Coast railroads —the Government or the state? The Government!

Who was it that sold the best agricultural lands on the face of the earth for twenty-five cents an acre—the state? No, the General Government!

Who was it that sold these magnificent stretches of land at this figure?

And that was no blunder, either! That was no blunder, for it was the best thing that could have happened. I admit that the government did not get much money out of it, but it got what was a heap sight better, for it got hundreds of thousands of men who are attracted to the soil and who have built their homes on the soil and it got great citizens—the greatest of this great country, (Applause) and when the time of stress and strife came in 1861 everyone of those farmer citizens, almost without exception, who went upon this land which they had gotten from the government at these figures—these were the men who upon the field of battle settled the idea that this was an indissoluble union of indissoluble states! (Applause.)

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The states have not done so very badly. They are most of them young. They will grow better all the time. The people of your state and the people of my state can tell what is best for the interest of the people of that state, and they can tell what is best for the interest of their own state better than anyone else in the world.

Of course, there is no citizen that can tell exactly what is best to be done always. There is no state that is endowed with wisdom from on high. (Applause.) Neither is the government. (Applause.)

So, Mr. Chairman, I am glad that this minority report has been submitted because it will, at least, give me one opportunity to record my vote against the doctrine of federal interference in the affairs of the sovereign states.

MR. GEORGE LYON, JR.: Mr. Chairman and Gentlemen, I am from Nebraska, and I am not a politician nor an orator, but when my name was mentioned I felt that I had to say something. I am a delegate to this Convention, appointed

by the governor of the State of Nebraska, who is a Democrat, and I am a Republican, but I have always been an advocate of people cleaning out their own stables and of women sweeping out their own kitchens. I am in favor of states' rights.

You are all acquainted with the story of old Abraham and how everything was delegated to him. Every power and right was delegated to Father Abraham, and if you wanted to do anything, you had to ask him for the privilege of doing it.

Now, if you believe in that kind of a thing, and if you want everything to be delegated to the Secretary of the Interior, you have an opportunity of doing so here today. My idea of a good government is to have the government divorce itself from all business, and especially of this business of trying to develop our water power for us. It seems to me that you can divorce the government from going into business with the idea of trying to make money. The more you can divorce the government from such an undertaking the better government it will be.

I believe this, and that is the reason why I am opposed to this water-power bill giving control over the water power of the states to the government and to the Secretary of the Interior, for, as Mr. Clark said, he would have to have a lot of deputies and delegates to handle these matters for him and it would cost a lot of money and would tend towards inefficiency.

I admire Mr. Walsh and I especially admire his bull-dog tenacity. I admire his speech that he made here. I admire it, and I admit that it was wonderful. I admire him this minute more than I ever did before, as he stands here demanding that his minority report should be accepted, but, I am on the other side. (Laughter and applause.)

I do not think that Senator Walsh likes the name of Mr. Dawson, but Mr. Dawson has not anything to do with it. He uses Mr. Dawson's name as an argument, but that is no argument. Mr. Dawson was elected as a delegate to this Convention because he knows something about water power. But he did not draw up these resolutions.

MR. A. E. CHANDLER: Mr. Chairman and Gentlemen, some of you here know my views. They are in black and white in regard to this general proposition. I believe, with Judge Short, that the constitutional proposition is just as he puts it. I do not believe that the United States have any authority to levy a tax in the regulation of power companies on navigable or non-navigable streams. I do not think that the United States is going into this business that we are discussing in the way we are planning here. The United States, however, does have a right to go into this business as a proprietor.

Personally, in a number of things which I have written, I have developed an argument showing that

the United States Government should not charge any returns for the use of its lands, but I appreciate the tremendous sentiment against my viewpoint. I therefore am willing to allow the United States Government to charge upon the value of the land, as land, but there comes the big rub.

The Secretary of the Interior shows that some of these reservoir sites may be worth millions of dollars. I have had a good deal of experience in appraising reservoir sites. I have been an engineer and appraiser of power sites for a number of different power companies, and if the appraisement is made on the value of the land and not on the value of the water site, they would not receive one-twentieth of the value of the property. I say to you that until you get away from that view of the proposition, you and I can not come together in any argument. I can not make very much of an argument against my various friends in the Interior Department, for they look at matters that same way. They are looking at it from the viewpoint of any ordinary engineer.

I want to say to all the gentlemen who have been so eloquent here on the floor, that there is absolutely no difference between us and our points of view as far as the Constitution is concerned. In fact, the state may receive, if it desires it, recompense for the use of the land in any way that it desires. I thank you for your indulgence. (Applause.)

SENATOR W. LAIR THOMPSON: It is impossible for me to understand how Mr. Chandler or anyone else can concede the unconstitutionality of the bill and then give his support to it. Why doesn't he come in with an independent report on it?

It seems to me that there are a good many things in this bill besides the question of holding land in perpetuity or for a limited period of time. That is just one of the questions presented, but it is shoved up as the big question.

Let me tell you that it is not the big question in my mind. The big question is whether or not we are going to let the United States take over the state's water and control it, and that is exactly what the bill means, and what it will certainly accomplish.

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There is no argument in the Senator's contention that your grandchildren can look after themselves. He says that for fifty years the states can regulate the rates, but even if that is so, why do you want the Government to take it back? This is a big question, and there is a big proposition involved.

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They have scoffed at these maps here on the wall, which have on their face what they are prepared to show. They show the taxable and the non-taxable areas today, and they do not mean to show anything more than that. Whenever you look at these maps you can realize what this bill and bills like

it in Congress are doing, and you know that they are tieing up our resources by this slow but sure process, the first step of which is the leasing of water power, and the second step will be the leasing of the rest of the domain and the bottling up of the entire state.

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Gentlemen, there is a principle involved here, and we don't want to compromise on the principle. Whenever you do you compromise everything.

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Now, Senator Walsh has said that Cooper was urging the adoption of this Ferris Bill and wanted that kind of legislation enacted.

SENATOR WALSH (Interrupting): No. He was asking for some legislation which would permit him—

SENATOR W. LAIR THOMPSON (Continuing): I have a telegram right here that will clear up that matter. He wanted some legislation that would permit development, and it was not the Ferris Bill he wanted.

I heard that he had been quoted by the Senator here otherwise, and I wanted to know if it could be possible, and I sent him a telegram asking what his views were. Mr. Cooper was absent from his office, but his firm wired a reply. I have it here and will read it to you. (Reads telegram.)

New York, N. Y., Sept. 22, 1915.

W. Lair Thompson,
Multnomah Hotel,
Portland, Oregon:

Replying your telegram 20th Mr. Cooper is away and we are unable to reach him by wire. However we can state that he believes it will be difficult and probably impossible to finance water powers on public lands unless Ferris Bill as reported to Senate is amended so that such water powers will not be subjected to any federal regulation, taxation or other restrictions which are not also applicable to water powers on private lands with which they may have to compete.

HUGH L. COOPER & CO.

Now, that states the question, and the whole question, in a nutshell. They cannot finance power propositions under such conditions as those proposed in the Minority Resolutions. (Applause.)

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The Senator says that you will get no legislation if you do not take that. He says that you will have to wait a long time before you get anything else.

Well then, we had better wait. (Applause.) We had better wait until the people find out that you cannot finance power companies just as you do other companies. We had better have no legislation, if we cannot have legislation based on grounds that will protect the interests of the Western States. If we cannot have legislation that is good for us and right, we had better wait until we can. They tell you that they want to regulate interstate rates, and intrastate rates where the state has not provided a means of doing so, but they do not say that they will pass a law that will apply to all transmission equally.

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What is it that you want? Is it regulation? If so, then pass a gen-

eral act applicable to all, and if you do that you will base it upon the ownership of the lands. I tell you the principle of the bill is wrong.

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SENATOR WALSH: Suppose that we changed the form of this resolution so as to provide that the rate might be fixed by the local public utilities commission, would that meet with your approval?

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SENATOR W. LAIR THOMPSON: No. I would never endorse any bill that stands for the principle of a Federal leasing of such property in the West. (Applause.)

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Referring again to the matter of these maps, I was much interested in Senator Chamberlain's remarks in regard to them, and especially in the part of his remarks where he claimed that these maps were false and untrue, and had been constructed for the purpose of misleading you gentlemen here at this Conference.

It seemed to be the Senator's purpose to cast some kind of a reflection upon this Conference, and upon the members here attending, but I want to tell you that that is not representative of the spirit of the State of Oregon in welcoming you here. I want to state that you are welcome here as high-minded men and gentlemen.

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I want to call your attention to his statement to the effect that the red only on that map is affected by the provisions of the Ferris Bill.

Gentlemen, look at the map and you will see that there are large green areas there, and every green spot is affected by the Ferris Bill also because of the waters on the Forest Reserve, which are withdrawn from the use of the people of this state the same as the red is withdrawn.

If you are familiar with conditions in the State of Oregon, and if you will look over this map, you will see that it includes every available water power and that it is on the public land. It takes it all in.

The senator also said that he would drop a little wrench into the well-oiled machinery of this Conference. I did not hear it fall, but I suggest that he reserve a large Stillson wrench for that perfectly-working, ball-bearing machine which proposes to thrust this iniquitous legislation down our throats. (Applause.)

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Gentlemen, I do not believe that I have anything more to say. The crux of the whole business is whether you want the Federal Government ever, at any time, to have an opportunity to acquire control of state affairs.

The question here before you is not whether you want this law to provide for a period of lease for a long time or for a short time.

It is not whether you want the term to be without end and the grant in perpetuity or not.

That is a small matter, and is something that can be worked out in the minds of the people.

The big question is whether they can at any time exercise the right of sovereignty in a state. That is what they are proposing to do in

this bill. They are not only proposing to do it now. but they plan to do it even more so in the future according to my interpretation of this matter.

You heard what the senators say: "We should guard the rights of the people and not let them get away from us," but these advocates of the Ferris Bill say to you, "You must let us take away your water and the control over it."

Let me ask you, who are the people, anyway? Are they Massachusetts or Mississippi or Oregon or any of the other sovereign states, or are they the Secretary of the Interior and the officers of the Federal Government?

When you say that you are reserving these things for the people, what do you mean? Do you mean that you are reserving them for the people of the state in which the property is situated, or do you mean that you are reserving them for the people of the whole country?

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Might I suggest that we do not lose sight of the real issue?

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Now, taking up this taxing question. It is true that during the time the lessee is operating under his lease, we may tax him, but it is equally true that at the end of his lease we will have the obligation of meeting these taxes. What does that mean? It means that if the lessee of the government takes this land and develops over one foot of government land, that at the end of the 50-year period of the lease provided for by this bill, the United States Government takes back not only this land which was taken under the lease, but it takes back the water also and every other property dependent in whole or in part upon the use of that land.

Suppose that there were half a dozen power plants necessary for the development of a proposition, and suppose that five of these power plants were built on private land and only one of them built on public land, and the juice from all of these is run together through a transmission line, every industry operated and owned by this combination would be dependent in whole or in part upon the one plant which is located upon the government land.

Suppose that there were several enterprises which were dependent in whole or in part upon that development, and suppose that, for instance, a railroad or some street railway which might even include interurban railroads, were dependent upon this, could the government take all of these things back under this law? Yes, sir!

Now, the Portland Railway, Light and Power Company paid $700,000 taxes last year—20 per cent of all the taxes that are paid in one county.

Do you want that corporation to be forever and forever removed from the power of taxation and control vested in the State of Oregon? (Applause.) Do you want to give to any government the power to do anything like that?

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With that power existing in the Federal Government, there will be no development in this part of the

country, because no man is going to spend his money in such a field when the Government may, under the conditions and provisions of this bill, take over his existing plant and all those dependent in whole or in part upon it at the end of his lease. Gentlemen, there is no middle ground upon this proposition. (Applause.)

Do not be mislead by any of the arguments here, gentlemen. The question is, are you going to give up your state rights? (Applause.)

MR. CLYDE C. DAWSON: Mr. Chairman, I am sorry if I trespass upon the gentlemen by talking any further, as I would like to have the question put. But before the question is put, I would like to say something to you. I did not propose to say anything further here, and I would not have done so had it not been for the fact of the little fling taken at the State of Colorado by the Senator from Montana. I think that nobody will deny that the Senator from Montana coos as softly as a little dove at times, but at other times he throws rocks and he has thrown a rock here.

I think it may be said with truth that it ill becomes a representative from the State of Montana to throw rocks at the people of the State of Colorado because of the trouble there which they have had brought upon them by the same class of people that made all the trouble in Butte, Montana, and throughout the State of Montana. (Applause.)

We will handle our troubles in Colorado, if you will handle yours in Montana, and we do not ask either the Senator from Montana or the Secretary of the Interior to handle them for us. We want to attend to our own troubles as God gives us the right to do, as free citizens of a great and glorious state.

Why didn't you, when you referred to the fact that the State of Colorado had allowed so much of its lands to get into the possession of the Colorado Fuel and Iron Company, say that John D. Rockefeller was a stockholder in the Colorado Fuel Company? That is the usual argument, but that is not argument. It is no argument at all! (Applause.)

Let me ask you who permitted these lands to go. Was it the state that permitted them to get into the hands of this company? No, it was the Federal Government.

And let me tell you that it is a good thing that these lands did get into the possession of this company, because it is from the activities of this company and other companies of a like character in the State of Colorado that we have grown as we have grown, and let me tell you further, gentlemen, that they hold less than one per cent of the coal lands that there are now withdrawn and tied up and held from the people of the state by the classification and the rates and regulations which are fixed and determined by the

Department of the Interior. (Applause.)

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I do not know whether he suggested that I represented that company! I never represented them in the world. I am not the representative of any power company. I do not belong as a lawyer to any corporation. I belong to my state.

I am a general practitioner—just a common lawyer that fights for my clients and for my people, whoever they may be! And always I consider standing over and above my client, the state and the people of the state and their rights. (Applause.)

I have always in mind the people of the State of Colorado, which I have called my home for over forty years. You don't get anywhere by trying to connect me with any interests of any kind, because the people of my own good state will tell you that my greatest fault is that I am uncontrollable!

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The Colorado Fuel and Iron Company has some coal lands in the State of Colorado, but if we could develop our water power under wise administration of the laws now existing, we would burn less of the coal and we would also dig less of it out of the treasury in the ground. (Applause.)

O, but they say, "We are trying to protect the people against themselves." And yet, gentlemen, an official of the Colorado Fuel and Iron Company told me less than six months ago, that the withdrawal and high classifications of coal lands had raised the value of their own holdings over $2,000,000, and, that, too, practically by one stroke of the pen. (Applause.)

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Again, down in the southwestern part of my state and in the northern part of New Mexico, three or four years ago, the Morgan interests acquired a vast area of coal lands and their representative told me that by their classification of that land—by the government survey of that land and the raise of price from $10 and $20 to $150, the Department of the Interior had, at one fell swoop, put into their coffers over a million and a half dollars without their sticking a pick into the ground. (Applause.)

That, gentlemen, is the way we protect the people! The "people" are the ones that some of us are interested in, because they are the ones who cast the vote, but, fortunately, I happen to be a private citizen. I never held an office in my life and I am interested in the people, not from a political standpoint, except that I am interested in seeing the rights given to the people by the Constitution of the United States preserved.

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And then, on the other hand, we heard Governor Lister say here that he does not want to see the Federal Government in control over the lands within the borders of his state and he says that they have sold but 10% of the school lands in his state, but have preserved and built up a fund for posterity and for the education of their children. And yet,

gentlemen, he signs the minority report, because he says they are so anxious for the development of the state resources in his country and of the water powers that they have there.

I do not know whether I would be violating any confidences in giving information as to the proceedings of the committee—not being versed in parliamentary usages, but as the Senator from Montana endeavored to throw discredit upon the resolutions, because he said that they were prepared by me, may I also violate the confidence of the committee room and say that when Governor Lister voted for the resolutions of the Senator from Montana he did it with a reservation. Two of them did that.

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I know what is the matter with the State of Washington. It is not the fact that we want or need more law. It is the fact that the administrative bureaus of Washington will not permit action under the present law.

On March 3, 1909, I had signed by Gifford Pinchot, who was then the head of the Forest Reserves, a special use agreement—a new one formed for the development of a river that lies in the governor's state. More than six years have passed and my client has spent $150,000 in preliminary work trying to finance that proposition, and they have never found and nobody has ever found a way of doing this, and for six years those lands have lain idle, and the 100,000 horse power has gone to waste because no man had the daring and courage to put $5,000,000 into a project under the perfectly ridiculous and absurd provisions of the permits as they are issued by the Federal Government. (Applause.)

It was said that Mr. Pinchot was doing this to protect the people against monopoly but from a practical standpoint the Stone & Webster interests, who were in control of the power development in the Puget Sound country, could well have afforded to pay a quarter of a million dollars a year for being protected in the monopoly they already had by the handicap which the regulations or permits put upon those seeking to develop power on government lands.

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They say that these resolutions offered by me are not constructive. They were not prepared by me alone. I had the assistance of the Senator from Utah and the assistance of Mr. Piles and of men like Mr. Smoot and Mr. Piles—some of the best and brainiest men versed in this subject, and I want to submit to you that they are constructive.

They call for a declaratory act by Congress that shall recognize the right of eminent domain in the state, so that the state can permit of the development of these resources. The state has that right and to say that it has not is no argument.

As long ago as 1866, when that Act was first passed, giving us this power, and for forty years since that time, the power has been in us, permitting the building of ditches

and reservoirs and things of that kind, and that law has never been changed.

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Gentlemen, let me tell you how these people reach out for more and more power. In 1906 or 1907, when the Kansas-Colorado case was argued in the Supreme Court of the United States, I was one of the lawyers representing Colorado, and I made that argument, with Attorney General Bonaparte and Solicitor General Hoyt and Assistant Attorney General Frank Campbell, and those gentlemen stood on the floor of the Supreme Court Chamber and said to that august body that these very provisions of the Act of 1866 which recognize the free right to the use of way over the government lands had stood unquestioned and unchallenged for forty years. (Applause.)

And yet, in Denver, in October, 1914, a representative of the now Department of Justice, stood in the Federal Court and insisted that the Act, as far as the power companies were concerned, was repealed by the Act of 1896, which was passed ten years before these people stood in the Supreme Court of the United States and said that it had been unquestioned and unchallenged for forty years.

Do you think from that that you can always rely on officials staying put? They keep reaching for more and more power all the time.

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I stand for a government of law and not of men. (Applause.) I was told here that Senator Clark referred to that espionage which had been thrown over all of the people of the West. We are all outlaws and renegades, and are all watched and spied upon and reported against, and whenever you put these power sites into the hands of the Federal Government you will have added one more agency which demands that they be under espionage and the spy system of the Federal Government.

I have been in the State of Colorado for forty years, and no one will say that I have ever in any sense been guilty of any of the violation of any of the laws of either my state or my country, whether wilfully or even ignorantly, but because of my attitude towards the departments in Washington over their exercise of power there were ten or fifteen sore heads of the Department of the Interior who tried to "get" something on me.

I was told within two weeks after my return home that I had been under supervision, and that while I did not know it, on two of my trips to Washington I was shadowed by the Special Agent from the time I got off the train at the station until I got on again. These special agents made a report on my conduct all the time I was there, and all they found was that I talked to a telephone girl in the Willard Hotel and that I bought an employe of the Interior Department two drinks. (Laughter.)

Now, wasn't that awful? If I had only stopped to think about it, I probably would have bought him more drinks, because their pay is so little that they cannot afford the

indulgences of life. But I always try to be friendly.

Let me say that I have found in the Department of the Interior that Secretary Lane and Mr. Tallman are generous and kind and are always ready to listen to what you have to say. I am not finding ing fault with these men, but with the system that reduces free born American citizens to nothing more than vassals because we happen to live in the public land states.

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I would like to argue the merits of this question, but I am sure that it is unnecessary, for I believe that this body already knows exactly what it will do with these reports but I thought that even though I came from the State of Colorado, and even though we have in our state the Colorado Fuel & Iron Co., with John D. Rockefeller as a stockholder in that company, and that even though we have troubles in Colorado similar to those of the Senator from Montana—I trust that these things will not becloud the real issue here, and I trust that his report will be rejected, and the one which happens to bear my name will be adopted. (Applause.)

SENATOR SMOOT: The Senator from Montana complains of the historical correctness of the majority resolutions. He also implies that the Constitution of the United States does not bear out the "Whereases" in the resolutions. Now, to you as a convention of delegates from these various interested states, I want to refer to the five "Whereases" in the resolutions and cite authorities for same.

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The first "Whereas" is the one that states that new states admitted into the Union are of necessity admitted upon an equal footing in all respects whatever with the original states, and this is sustained by numerous decisions of the Supreme Court of this country. (Applause.)

The second "Whereas" is to the same effect and supported by the same decisions to the effect that each state has full jurisdiction over all lands within its borders, including the beds of streams and other waters, and that is quoted from the case of Colorado vs. Kansas, 206 U. S., 46.

The third is in line with numerous decisions of the Supreme Court, and I will not take the time to name them.

The fourth "Whereas" of the resolutions was adopted unanimously by the National Conservation Congress at Washington, D. C., in November, 1913. (Applause.)

The fifth item is statistical; the next is found in the Republican platform of 1860 and is lifted bodily into this resolution. (Applause.) The next is taken line for line from the opinion of Mr. Justice Lurton in Coil vs. Smith, 221 U. S., 559.

These are all rather good authority, I think. (Applause.)

I was sorry, my friends, that the Senator from Montana had to advert so slightingly to the States of Utah and Colorado. Far be it from me to refer in any way disrespectfully of any state in the Union. But if the State of Utah and her people have seen fit to pass certain laws or not to pass them, that is a matter of concern only to the people of Utah. The people of that state have invited men to come among them from all over the world to develop her resources and if, in their judgment they do not deem it expedient that a Public Utilities Commission be formed, that is a matter of concern to the people of Utah and not for our friend, the Senator from Montana. (Applause.)

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I think I know just as well what the governor of Utah went to Washington for as any other man outside of the governor himself.

While it is true that many acres of lands in my state have been withdrawn for water powers, it is also true that there are not many water powers in the state.

But, I tell you that there is more in this program than the control of water power. Take Green River, the largest river we have in our state.

There is a wilderness of land on the south side of the river. It is barren and there is hardly enough grown upon it to feed the jack rabbits; it is an arid part of our state, but it occurred to some enterprising men that they could build a dam in the river and could divert the water and put it upon the vast areas of arid land, and convert it into a place where men and women could settle and make happy homes, and help bear the burdens of the maintenance of the laws and institutions of our state.

They thought that by so doing they could induce people to come and enjoy all of the blessings of citizenship in our state and make a profitable investment as well. After they had proceeded with this proposition and after the surveys were made and the work begun they found that it was more than they could finance, and they undertook to get assistance.

Last night you saw cast upon the screen a picture protraying a freight-train of but few cars being pulled over the Soldier Summit, with four engines puffing and smoke ascending from all of them, and the smoke indicating that tons and tons of coal was being consumed on each trip. This picture was very interesting to the people of Utah and a splendid example of Federal interference with a state's rights.

Assistance was promised by the Utah Power & Light Co. They said: "We will put in a dam for you and pay all the expenses attached thereto. We will also build a reservoir and furnish you all the water you desire, and then settlers can make their homes here and develop the resources of this undeveloped land." This was agreeable to the irrigation people, and then the power people went to the railroad and offered to furnish electric power for their road. They were ready to enter into a contract so that those cars you saw in the pic-

ture last night could be hauled the same as the cars are hauled in the State of Montana. In connection with the irrigation project an application for power site was made to the Interior Department, but was promptly refused. No irrigation—no power. Montana trains can be hauled by electrical power as the power plant is on private-owned lands. Utah trains must use coal because the electric plant was to be built on public lands and useless for any other purpose.

The power people were met with a "No, sir. Unless you come and eat out of our hands and comply with all the regulations that may be made and taxes imposed, you cannot get a permit." (Applause.)

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Well was it said here by the senator that there was a lesson in that speech delivered last evening by Mr. Pierce. All of you heard it. Utah people at least knew what it meant.

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My friends, ten years ago I was told by so-called conservationists that no permit would be granted for power sites and that no titles would pass until the people of the western states would agree to the policy of a Federal tax on power developed. And they have been able to carry out that declaration so far.

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If we are ready to concede to them all that they demand—perhaps, not all they want—but the principle of leasing involved in the Ferris Bill, and allow them to secure control over the water of the states, I promise you people you will have a leasing system of the balance of the public domain, and the people of the United States will be the tenants of the government thereafter.

Hasten the day when we can have power and nitrate plants, not one, but dozens of them, if necessary, and not by surrendering rights that under the Constitution rightfully belong to you and to the people of the state.

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I was rather pleased to hear the senator admit that whatever tax is placed by the government of the United States upon the developed water power will ultimately fall upon the consumer. But, you do not forget that but the day before yesterday there stood upon this platform a representative of the Secretary of the Interior and of the Department of Agriculture, and speaking in the name of his chief, he called attention to the fact—as he claimed—that the charge was so infinitesimally small that no one would ever pay more on account of a Government tax being imposed.

I thought the Senator from Montana had too much good common sense to approve of such a statement. I have heard this, not once but a dozen times, from men who speak not only for themselves but for the authorities and the heads of the departments in Washington.

You will find, if you will look into the hearings on this matter, that Mr. Merrill is recorded as having figured the additional cost of the Government tax of $1.00 per

horse power upon a sixteen candle power lamp, as if the hydro-electric power of the United States was confined in its use to the lighting of homes.

The great field for electricity is in the development of power, and but little of it is used for the purpose of lighting homes. There is no question about this. Only a very small percentage of it will be used for the purpose of lighting homes.

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Now, as to the signers of the Minority Report and the Majority Report of the Senate Committee. I want to say that Senator Jones had told me not once but a dozen times that he would vote against the Ferris Bill, or any bill in which the rights of the states are involved.

The two California senators—and I speak now of before the fourth of March—were Senator Works and Senator Perkins, and I know that both of them are bitterly opposed to the principles as outlined in the Ferris Bill.

Utah is against it. Also, Wyoming. Washington is against it. I do not know how Senator Lane of Oregon stands on the question. I have never heard him express himself. Therefore, I cannot say as to what he will do. The State of Idaho is against it and they are bitterly opposed to it. The State of New Mexico is bitterly opposed to it, and the Arizona senators are not enthusiastic over the bill.

I want to say to you, my friends, and testify as to what the Senator from Wyoming stated, that at the Public Lands Committee hearings on the Ferris Bill there were hours and hours at a time that there was not a Democratic senator in the committee room. Not one! Of course, I thought that we were going to beat the bill, because I had heard Democratic members say that they were opposed to the whole system of conservation and of leasing on the part of the Government.

The bill was reported to the senate at the last session of Congress and it was a short session, and I say to you, my friends, that the bill would never have passed as long as I had strength and voice to talk on the floor of the senate. (Applause.)

I am fearful that it will pass at this coming session of Congress. Don't be deceived as to the amendments put upon it in the senate. When it goes into conference, nobody but the Interior Department can say how it is going to come out of that conference.

Under the rules of the senate we can not vote upon each item of disagreement. We will have to swallow the whole report or none. Nobody knows the rules of the senate better than the department does. So, although I am fearful that the bill will pass, it is not going to be altogether the way that the senate will want to pass it, but it will be the way the Secretary of the Interior desires it passed.

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Mr. Lyons, in his remarks, answered for himself. Therefore, I have but little to say about that, but if I were appointed a delegate to any convention, I would take it

for granted that the appointing power reposed in me a duty, and that duty would be to use my best judgment upon any question that may come up before the Convention. That is all that Mr. Lyons did.

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Every state that has sent here a delegation opposed to the Ferris Bill is charged with being a packed delegation.

But, every state that sent a solid delegation for it, that delegation is not packed. (Laughter.)

I do not think that that kind of an argument carries with it very much weight.

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The question is this—if the resolutions of the majority meets with your views more nearly than the resolutions offered by the minority, then vote for them, and vice versa. I would not have a man stultify himself even if the resolutions of the majority were defeated.

I think that the most unfortunate man in the world is he who always has his ear to the ground to learn what others are talking about, and who does not use his own judgment, but expresses what he thinks the opinion of others might be. And yet I know what a power public opinion is. I want to be true to myself, and every other man should be true to himself.

I have got to live with Reed Smoot all the days of my life, and I cannot get away from him. His inward thoughts and what he actually believes are recorded and impressed upon his soul, and every time I act contrary to what I believe and know to be right it mars my character.

So, all I wish to say is, just vote upon this resolution as your judgment may direct. I thank you. (Applause.)

Calls for "Question, question."

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MR. ROCKWELL: Mr. President, as a member of the Committee on Order of Business, I suggest to the Chair that the vote on these resolutions be taken by the call of the roll. I do not think that we put into our report just the method to be pursued in voting and that is the reason that I suggest it now.

The Chairman announced that if there was no objection the votes on resolutions would be taken by the roll call of the delegates. There being no objection, it was so ordered.

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The Chairman announced that F. B. Randall of Lewiston, Idaho, one of the delegates originally appointed to represent the State of Idaho, had arrived at the Conference and desired to be recognized as a member thereof.

The Chairman stated that if there was no objection the rules would be suspended and Mr. Randall would be seated as a delegate. There was no objection, so the rules were suspended, and Mr. Randall was seated as a delegate.

The roll was called on the motion to substitute the Minority Resolutions for the resolutions reported by the Resolutions Committee, and was as follows:

ARIZONA:
- Howard S. Reed....No

CALIFORNIA:
- A. E. Chandler....Aye

COLORADO:
- Geo. E. West....No
- Clyde D. Dawson....No
- Thomas Tonge....No
- A. P. Ardourel....No
- David Elliott....No
- W. F. R. Mills....No

IDAHO:
- Governor M. Alexander....Absent
- James H. Hawley....No
- Fred W. Berger....No
- J. W. Hart....No
- I. E. Rockwell....No
- Dr. J. B. Morris....No
- F. S. Randall....No

MONTANA:
- Senator Thos. J. Walsh....Aye
- J. B. Collins....No
- Sam D. Goza....Aye
- J. E. Erickson....Aye

NEW MEXICO:
(Not represented.)

NEVADA:
- W. M. Kearney....Aye

NORTH DAKOTA:
- John O. Hanchett....Aye
- D. V. Moore....No

OREGON:
- Governor James Withycombe.Absent
- W. Lair Thompson....No
- S. B. Huston....No
- Edgar B. Piper....No

SOUTH DAKOTA:
(Not represented.)

UTAH:
- Governor Wm. Spry....No
- Senator Reed Smoot....No
- W. D. Beers....No
- E. A. Wedgwood....No
- S. A. Bailey....No

WASHINGTON:
- Governor Ernest Lister....Absent
- M. C. Harris....No
- A. H. Imus....No
- W. V. Wells....No
- Phil H. Adams....Aye

WYOMING:
- Clarence D. Clark....No

NEBRASKA:
- George Lyon, Jr....No

The Secretary reported to the Chairman that the vote was as follows:

Ayes, 7; Noes, 28.

The Chairman declared the motion lost.

Senator Walsh of Montana introduced Resolutions and moved their adoption as a Substitute for the Majority Report.

The point of order was raised by Senator Smoot that under the rules a new resolution could not be received by the Conference at this time.

Senator Smoot moved that unanimous consent be given to Senator Walsh to introduce the new resolutions and to move their adoption as a substitute for the committee resolutions.

Motion duly seconded and carried unanimously.

Under unanimous consent, Senator Walsh introduced his resolutions, and moved their adoption as a substitute for the committee resolutions.

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The Secretary read Senator Walsh's resolutions, which were as follows:

Walsh Resolutions.

It is the opinion of this Congress that no subject likely to engage the attention of the National Legislature at its ensuing session transcends in importance that which will deal with the disposition of power sites on the public domain. Development is retarded if not wholly interrupted because capital does not find

in the existing law the security to which it is entitled.

An act framed upon the following principle, would, in the judgment of this Congress, prove inviting to investors, safeguard the public interests and be generally acceptable to the people of the states directly interested, namely:

The sites should be leased for a period of fifty years.

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The question was put on the motion of Senator Walsh and the roll was called as follows:

ARIZONA:
HOWARD S. REED.....No

CALIFORNIA:
A. E. CHANDLER.....Aye

COLORADO:
A. P. ARDOUREL.....No
GEORGE E. WEST.....No
CLYDE C. DAWSON.....No
THOMAS TONGE.....No
DAVID ELLIOTT.....No
W. F. R. MILLS.....No

IDAHO:
GOVERNOR M. ALEXANDER.....Absent
JAMES H. HAWLEY.....No
FRED W. BERGER.....No
J. W. HART.....No
I. E. ROCKWELL.....No
DR. J. B. MORRIS.....No
F. S. RANDALL.....No

MONTANA:
SENATOR THOS. J. WALSH.....Aye
J. B. COLLINS.....No
SAM D. GOZA.....Aye
J. E. ERICKSON.....Aye

NEW MEXICO:
(Not represented.)

NEVADA:
W. M. KEARNEY.....Aye

NORTH DAKOTA:
JOHN O. HANCHETT.....Aye
D. V. MOORE.....No

OREGON:
GOVERNOR JAMES WITHYCOMBE.Absent
W. LAIR THOMPSON.....No
S. B. HUSTON.....No
EDGAR B. PIPER.....No

SOUTH DAKOTA:
(Not represented.)

UTAH:
GOVERNOR WM. SPRY.....No
W. D. BEERS.....No
SENATOR REED SMOOT.....No
E. A. WEDGWOOD.....No
S. A. BAILEY.....No

WASHINGTON:
GOVERNOR ERNEST LISTER.....Absent
M. C. HARRIS.....No
A. H. IMUS.....No
W. V. WELLS.....No
PHIL H. ADAMS.....Aye

WYOMING:
CLARENCE D. CLARK.....No

NEBRASKA:
GEORGE LYON, JR.....No

The Secretary reported to the Chairman that the vote was as follows:

Ayes, 7; Noes, 28.

The Chairman declared the motion lost.

The Chairman put the original motion of Senator Smoot for the adoption of the Resolutions reported by the Committee on Resolutions as the Resolutions of the Conference.

The roll was called and is as follows:

ARIZONA:
HOWARD S. REED.....Aye

CALIFORNIA:
A. E. CHANDLER.....No

COLORADO:
A. P. ARDOUREL.....Aye
GEORGE E. WEST.....Aye
CLYDE C. DAWSON.....Aye
THOMAS TONGE.....Aye
DAVID ELLIOTT.....Aye
W. F. R. MILLS.....Aye

IDAHO:
GOVERNOR M. ALEXANDER.....Absent
JAMES H. HAWLEY.....Aye
FRED W. BERGER.....Aye
J. W. HART.....Aye
I. E. ROCKWELL.....Aye
DR. J. B. MORRIS.....Aye
F. S. Randall.....Aye

MONTANA:
Senator Thos. J. Walsh.....No
J. B. Collins.....Aye
Sam D. Goza.....No
J. E. Erickson.....No

NEW MEXICO:
(Not represented.)

NEVADA:
W. M. Kearney.....No

NORTH DAKOTA:
John O. Hanchett.....No
D. V. Moore.....Aye

OREGON:
Governor James Withycombe.Absent
W. Lair Thompson.....Aye
S. B. Huston.....Aye
Edgar B. Piper.....Aye

SOUTH DAKOTA:
(Not represented.)

UTAH:
Governor Wm. Spry.....Aye
W. D. Beers.....Aye
Senator Reed Smoot.....Aye
E. A. Wedgwood.....Aye
S. A. Bailey.....Aye

WASHINGTON:
Governor Ernest Lister.....Absent
M. C. Harris.....Aye
A. H. Imus.....Aye
W. V. Wells.....Aye
Phil H. Adams.....No

WYOMING:
Clarence D. Clark.....Aye

NEBRASKA:
George Lyon, Jr.....Aye

The Secretary reported to the Chairman that the vote was as follows:

Ayes, 28; Noes, 7.

The Chairman declared the motion adopted and that the adoption of the motion was the adoption of the Resolutions reported by the Committee on Resolutions as the Resolutions of the Conference.

The Chairman: The chair will take occasion, on behalf of the delegates present, to express our appreciation to the governor of Oregon and to the legislature of Oregon, to the Chamber of Commerce and to the good people of Portland for their hospitality and for the courtesies extended to this Convention. Governor Hawley.

Mr. Hawley: I was about, Mr. Chairman, to offer the suggestions or the remarks of the chairman in the nature of a resolution.

The Chairman: Well, knowing Governor Hawley I am very well satisfied that he has something very much better than I offered.

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Ex-Governor James H. Hawley of Idaho moved that a rising vote of thanks be extended to the Portland Chamber of Commerce, the Portland Rotary Club, the Governor, the Legislature of the State of Oregon, and the people of Portland for the hospitality and courtesies extended to the delegates in attendance at the Conference.

Motion was seconded.

The Hon. Clay Tallman, Guest of the Conference, asked for unanimous consent that the Official Guests of the Conference be permitted to vote upon the question.

There being no objection, unanimous consent was accorded.

Motion was carried by the Delegates and Official Guests rising to their feet.

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Senator Thompson of Oregon moved that true copies of the Resolutions of the Conference be engrossed and signed by the President and Secretary of the Conference, and transmitted by the Sec-

retary to the President of the United States, the Secretary of the Interior, the Secretary of Agriculture, the Senators and Representatives in Congress of all the States of the United States, and to the Delegates of the Conference.

Motion duly seconded and carried unanimously.

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The following telegram, addressed to the Chairman of the Conference, was received as the motion to adjourn was being put, and the secretary was directed to incorporate same in the record:

Glenwood Springs, Colo.,
Sept. 23, 1915.

Chairman, Water Power Conference, Multnomah Hotel, Portland, Oregon:

Colorado Light, Power and Railway Association, now holding 13th Annual Convention, today unanimously adopted the following resolution:

Whereas, the expressed policy of the Federal Government upon the utilization of public lands in development of water power as exemplified in the so-called Ferris Bill denies the sovereignty and the eminent domain of the State of Colorado and would place burdensome restrictions upon all further developments of water power; and

Whereas, we believe that the right to condemn all property except that property devoted to federal uses upon which sovereignty is vested in the United States by the Constitution for public or quasi-public use, whether the proprietorship of such property lies in the Federal Government or in private ownership, is a fundamental constitutional right of our State; and

Whereas, further we believe that from an economic standpoint alone wisdom and sense would dictate that the state and not some remote authority should determine and control whatever degree of stimulation, condition or restriction, as determined by local needs and conditions, should be placed upon the development of the natural resources within the state; therefore be it

Resolved, that the Colorado Light, Power and Railway Association, in annual convention assembled, depreciates and protests against the federal policy contained in the Ferris Bill directly contravening the views herein expressed, and against any federal policy denying to the states the rights to condemn public lands at not exceeding the fair market value of the lands so condemned, or any policy depriving the states of their inherent right to control and regulate their own internal affairs, or conflicting with such control and regulation by the state; and be it further

Resolved, that this association protests against lodging in the Federal Government the tremendous power over all future industrial growth in public land states now sought to be arrogated to the Federal Government, and declares that the policy of the Federal Government is most portentous to the future political welfare of the citizens of all public land states; and be it further

Resolved, that this resolution be spread upon the minutes of the association and copies thereof be sent the President of the United States, the Secretary of the Interior of the United States, the Governor of Colorado, the Colorado Senators and Representatives in Congress, the President of the Investment Bankers Association of America, the President

of the American Mining Congress, the President of the National Electric Light Association *and to the proper presiding officer of the Portland Conference of western executives and legislators now in conference at Portland, Oregon, upon the matter of federal policy on water power development.*

W. F. RABER, *President.*

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Senator Reed Smoot of Utah moved that this Conference do now adjourn *sine die.*

Motion duly seconded and carried unanimously.

At 2:10 o'clock P. M. the Chairman announced this Conference is now adjourned *sine die.*

(Signed)

C. C. CHAPMAN,
Secretary.

Portland, Oregon, Sept. 23, 1915.

I hereby certify that the foregoing is a true copy of the minutes and proceedings of the Western States Water Power Conference, held in Portland, Oregon, September 21, 22, and 23, 1915, the original being on file in my office in Portland, Oregon.

Secretary.

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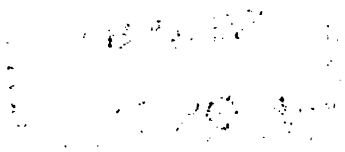

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